

No. 15999 ✓

United States
Court of Appeals
for the Ninth Circuit

BEATRICE NELSON,

Appellant,

vs.

NEW HAMPSHIRE FIRE INSURANCE COM-
PANY, a Corporation,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Idaho,
Eastern Division.

FILED

JUN 20 1958

No. 15999

United States
Court of Appeals
for the Ninth Circuit

BEATRICE NELSON,

Appellant,

vs.

NEW HAMPSHIRE FIRE INSURANCE COM-
PANY, a Corporation,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Idaho,
Eastern Division.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer	17
Answer to Request for Admissions, Filed August 20, 1957	28
Answer to Request for Admissions, Filed No- vember 12, 1957	31
Attorneys, Names and Addresses of	1
Bond for Costs on Appeal	45
Certificate of Clerk	151
Complaint, Amended	11
Findings of Fact and Conclusions of Law	38
Interrogatories and Answers to Interrogatories	31
Judgment	44
Motion to Amend	14
Motion to Dismiss	16
Motion Re Exhibits	158
Stipulation Re	159
Notice of Appeal	45
Order of Removal	10

INDEX	PAGE
Petition for Removal	3
Ex. A—Summons	6
B—Complaint	7
Record of Hearing, May 2, 1957	17
Request for Admissions, Plaintiff's, Filed February 26, 1957	23
Request for Admissions, Plaintiff's, Filed August 14, 1957	26
Request for Admission, Plaintiff's, Filed October 4, 1957	29
Response to Request for Admissions	25
Statement of Points, Appellant's	154
Stipulation to Amend the Amended Complaint by Interlineation	15
Order Re	16
Transcript of Proceedings	47
Witnesses:	
Bates, Daniel H.	
—direct	83, 148
—cross	84
Franks, Robert D. (Deposition)	
—direct	111
Fritcher, James T.	
—direct	79

INDEX

PAGE

Witnesses—(Continued):

Nelson, Beatrice

—direct55, 150

—cross 65

—redirect 76

Peterson, H. Dean

—direct100, 103

—cross 53

Riley, Leonard (Deposition)

—direct 133

Smith, Stanley

—direct 86

—cross 94

NAMES AND ADDRESSES OF ATTORNEYS

L. CHARLES JOHNSON,
Carlson Building,
Pocatello, Idaho;

GEORGE R. PHILLIPS,
Ross-Davis Building,
Pocatello, Idaho,

Attorneys for Appellant.

J. F. MARTIN,
C. BEN MARTIN,
P. O. Box 2184,
309 Idaho Building,
Boise, Idaho,

Attorneys for Appellee.

In the United States District Court in and for the
District of Idaho, Eastern Division

Civil No. 2012

BEATRICE NELSON,

Plaintiff,

vs.

NEW HAMPSHIRE FIRE INSURANCE COM-
PANY,

Defendant.

PETITION FOR REMOVAL

The petition of New Hampshire Fire Insurance Company, the above-named defendant, respectfully alleges:

I.

That this petitioner is a corporation organized and existing under and by virtue of the laws of the State of New Hampshire.

II.

That the above-entitled action has been filed in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Bannock, and is now pending therein.

III.

That service of Summons and Complaint in the above-entitled action was made upon your petitioner on the 10th day of January, 1957, a copy of the Summons in said action being attached hereto, marked "Exhibit A" and made a part hereof, and

a copy of the Complaint in said action being also attached hereto, marked "Exhibit B" and made a part hereof, and that no other process or pleading has been served upon your petitioner.

IV.

That this is a civil action and, as shown by said Complaint, the sum or amount in controversy exceeds the sum of \$3,000.00, exclusive of interest and costs.

V.

That the action and controversy which forms the basis for the said action is between residents and citizens of different states, that-is-to-say, the plaintiff herein is a resident and citizen of the State of Idaho residing at American Falls, Power County, therein, and the defendant is a corporation organized and existing under and by virtue of the laws of the State of New Hampshire.

VI.

That said action is now pending in the District Court of the Fifth Judicial District of the State of Idaho in and for the County of Bannock and thirty days have not elapsed since the service of said Summons and Complaint upon this defendant and this defendant has not answered or appeared in the action filed in said District Court for Bannock County.

VII.

That your petitioner desires the removal of this cause to the United States District Court in and for

the District of Idaho, Eastern Division, the District and Division within which this case is now pending.

VIII.

Your petitioner herewith files, with this petition, a bond with good and sufficient surety to pay all costs and disbursements incurred by the plaintiff by reason of these removal proceedings should it be held that this case was not lawfully and properly removed to the United States District Court.

Wherefore, New Hampshire Fire Insurance Company, your petitioner herein, prays that upon filing this petition and bond in the United States District Court in and for the District of Idaho, Eastern Division, and upon filing a copy of this petition in the office of the Clerk of the District Court of the Fifth Judicial District of the State of Idaho in and for the County of Bannock, that the said District Court in and for the County of Bannock proceed no further therein except to make an Order of Removal of said cause to the United States District Court in and for the District of Idaho, Eastern Division.

J. F. MARTIN,
C. BEN MARTIN.

By /s/ C. BEN MARTIN,
Attorneys for Defendant.

EXHIBIT A

In the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Bannock

No. 19826

BEATRICE NELSON,

Plaintiff,

vs.

NEW HAMPSHIRE FIRE INSURANCE COMPANY,

Defendant.

SUMMONS

The State of Idaho Sends Greetings to the Above-Named Defendant:

You are hereby notified, that a complaint has been filed against you in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Bannock by the above-named plaintiff and you are hereby directed to appear and plead to said complaint within twenty days of the service of this Summons; and you are further notified that unless you so appear and plead to said complaint within the time herein specified, the plaintiff will take judgment against you as prayed in said complaint.

Witness my hand and the seal of said District Court this 7th day of January, 1957.

SARAH DEVANEY,
Clerk;

By TWYLA L. STONE,
Deputy.

EXHIBIT B

In the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Bannock

BEATRICE NELSON,

Plaintiff,

vs.

NEW HAMPSHIRE FIRE INSURANCE COMPANY,

Defendant.

COMPLAINT

Comes now Beatrice Nelson, and for cause of action against the defendant complains and alleges:

1.

That at all times hereinafter mentioned, the defendant is an insurance corporation duly authorized to do business in the State of Idaho by having complied with the laws of the State of Idaho.

2.

That the defendant is organized under the laws of another state than the State of Idaho.

3.

That on the 12th day of June, 1956, the defendant, New Hampshire Fire Insurance Company, issued a policy to the plaintiff insuring a certain trailer home, Serial No. 6955, against loss from fire and lightning, and that said trailer home was insured to

protect the plaintiff from loss in an amount not to exceed \$5000.00; and that the value of said trailer home on said June 12, 1956, was \$6000.00

4.

That the defendant has a copy of the insurance policy in its possession and it would be useless and idle ceremony to attach a copy to this Complaint. That said insurance policy was countersigned on June 12th, 1956, by one H. Dean Peterson, an authorized agent of defendant, and was so countersigned and issued and the contract completed in the County of Bannock, State of Idaho; and the said policy will be produced at the trial as evidence.

5.

That the trailer home covered by said policy, issued by said defendant, was a 1956 Supreme Trailer Home, 46 feet long, Serial No. 6955, and on the 23rd day of September, 1956, and immediately prior to the damage hereinafter indicated, the said trailer home had a value of \$5,895.00.

6.

That on the 23rd day of September, 1956, at American Falls, Idaho, said trailer home was damaged by fire, and depreciated, and after said fire the defendant hired as its agents certain adjusters and said adjusters, S. S. Smith and General Adjustment Bureau, Inc., did secure four bids of purchase and the high bid was \$1,267.50, and said \$1,267.50 was the reasonable value of said trailer home immediately after said fire.

7.

That the plaintiff has complied with all of the terms and provisions of said policy which it is incumbent upon her to so do.

8.

That the plaintiff has made demand upon the defendant for such sums as are due because of the damages incurred to the trailer home from said fire and the defendant has neglected or refused to pay to the plaintiff any sum whatsoever.

9.

That the defendant has obligated the plaintiff to obtain services of legal counsel to prosecute this action and she has obtained the service of the law firm of Johnson and Olson, duly licensed and practicing attorneys in the State of Idaho, and she has promised to pay to them a reasonable fee for their services, and such reasonable fee being \$1,500.00 or more, and defendant is required to pay such fee to plaintiff pursuant to Section 41-1403, Idaho Code.

Wherefore, the plaintiff prays judgment of \$4,627.50, costs of suit, and that she be awarded in addition a reasonable attorney fee of \$1,500.00 by the Court, pursuant to Section 41-1403, Idaho Code, and to such other and further relief as to the Court may seem just.

JOHNSON AND OLSON,
By L. CHARLES JOHNSON,
Attorneys for Plaintiff.

Duly Verified.

[Endorsed]: Filed February 1, 1957.

[Title of District Court and Cause.]

Civil No. 19826

ORDER OF REMOVAL

It appearing to the Court that the defendant in the above-entitled action did, on the . . . day of February, 1957, make a Special Appearance herein for the purpose of filing and presenting a copy of Petition for Removal of said cause to the United States District Court in and for the District of Idaho, Eastern Division, that a copy of said Petition and Bond for the removal of same, together with a copy of Notice showing service thereof on the above-named plaintiff, have been filed herein and the Court being advised in the premises,

Now, Therefore, It Is Hereby Ordered:

I.

That the above-entitled cause be, and it is hereby, removed to the United States District Court in and for the District of Idaho, Eastern Division, pursuant to the petition and the statutes in such cases made and provided.

II.

That all further proceedings in this Court, in the above-entitled action, are hereby stayed until ten days after said action or any issue therein is remanded by said United States District Court in the event that said action or any issue involved therein is so remanded by said Court.

III.

That the Clerk of this Court make certified copies of the records and proceedings herein for transmission to the United States District Court, as required by law.

Dated this 4th day of February, 1957.

DARWIN D. BROWN,
District Judge.

[Endorsed]: Filed February 4, 1957.

[Title of District Court and Cause.]

AMENDED COMPLAINT

Comes now Beatrice Nelson, and for cause of action against the Defendant complains and alleges:

I.

That at all times hereinafter mentioned, the Defendant is an insurance corporation duly authorized to do business in the State of Idaho by having complied with the laws of the State of Idaho.

II.

That the Defendant is organized under the laws of another State than the State of Idaho.

III.

That on or about May 17, 1956, Plaintiff purchased a 1956 Supreme Trailer House; forty-six (46) feet long, serial number 6955, and then took

possession of same and retained possession and lived in same until the fire hereafter alleged occurring September 23, 1956.

IV.

That on the 12th day of June, 1956, the Defendant, New Hampshire Fire Insurance Company, issued a policy to the Plaintiff insuring a certain trailer home, Serial No. 6955, against loss from fire and lightning, and that said trailer home was insured to protect the Plaintiff from loss in an amount not to exceed \$5000.00.

V.

That at such time as the insurance took effect as hereinbefore alleged and at the time of the loss as hereinafter alleged, the Plaintiff had an insurable interest in the property insured.

VI.

That the value of said trailer home on said June 12, 1956, was \$6000.00

VII.

That the Defendant has a copy of the insurance policy in its possession and it would be an idle ceremony to attach a copy to this Complaint; and the said policy will be produced as evidence.

VIII.

That said insurance policy was countersigned on June 12th, 1956, by one H. Dean Peterson, an authorized agent of Defendant, and was so countersigned and issued and the contract completed in the County of Bannock, State of Idaho.

IX.

That the trailer home covered by said policy, issued by said Defendant, was the same 1956 Supreme Trailer Home, 46 feet long, Serial No. 6955 purchased by the Plaintiff on May 17, 1956, and on the 23rd day of September, 1956, and immediately prior to the damage hereinafter indicated, the said trailer home had a value of \$5,895.00.

X.

That on the 23rd day of September, 1956, at American Falls, Idaho, said trailer home was damaged by fire, and depreciated, and after said fire the Defendant hired as its agents certain adjusters and said adjusters, S. S. Smith and General Adjustment Bureau, Inc., did secure four bids of purchase and the high bid was \$1,267.50, and said \$1,267.50 was the reasonable value of said trailer home immediately after said fire.

XI.

That the Plaintiff has complied with all of the terms and provisions of said policy which it is incumbent upon her to so do.

XII.

That the Plaintiff has made demand upon the Defendant for such sums as are due because of the damages incurred to the trailer home from said fire and the Defendant has neglected or refused to pay to the Plaintiff any sum whatsoever.

XIII.

That the Defendant has obligated the Plaintiff to obtain services of legal counsel to prosecute this action and she has obtained the service of the law firm of Johnson and Olson, duly licensed and practicing attorneys in the State of Idaho, and she has promised to pay to them a reasonable fee for their services, and such reasonable fee being \$1,500.00 or more, and Defendant is required to pay such fee to Plaintiff pursuant to Section 41-1403, Idaho Code.

Wherefore, the Plaintiff prays Judgment of \$4,-627.50, costs of suit, and that she be awarded in addition a reasonable attorney fee of \$1,500.00 by the Court, pursuant to Section 41-1403, Idaho Code, and to such other and further relief as to the Court may seem just.

JOHNSON AND OLSON,

By /s/ L. CHARLES JOHNSON,
Attorneys for Plaintiff.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed February 26, 1957.

[Title of District Court and Cause.]

MOTION TO AMEND

Comes Now the Plaintiff and moves the Court for leave to amend by interlineation by substituting in Paragraph IV a comma for the period and

by adding to said Paragraph IV the clause: "And such insurance was in full force and effect on the date of said loss hereinafter alleged."

JOHNSON AND OLSON,

By /s/ L. CHARLES JOHNSON,
Attorney for the Plaintiff.

Service of copy acknowledged.

[Endorsed]: Filed October 4, 1957.

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated between the above-entitled parties, by and through their respective attorneys of record, that the plaintiff shall have leave to amend the Complaint on file herein in conformity with the Motion to Amend the Complaint heretofore filed, and that all pleadings and papers and proceedings in the cause running to the Amended Complaint on file shall run to the Amended Complaint as amended by interlineation when and if the Court grant permission to so amend.

J. F. MARTIN,
C. BEN MARTIN,

By /s/ C. BEN MARTIN,
Attorneys for Defendant.

JOHNSON AND OLSON,

By /s/ L. CHARLES JOHNSON,
Attorneys for Plaintiff.

ORDER

It is so ordered this 4th day of November, 1957.

/s/ FRED M. TAYLOR,
U. S. District Judge.

[Endorsed]: Filed November 4, 1957.

[Title of District Court and Cause.]

MOTION TO DISMISS

Comes Now the defendant and moves this Court for an Order Dismissing the above-entitled cause upon the grounds and for the reasons that the Amended Complaint fails to state sufficient facts upon which relief could be granted as prayed for in the Amended Complaint.

J. F. MARTIN,
C. BEN MARTIN,By /s/ J. F. MARTIN,
Attorneys for Defendant.

[Endorsed]: Filed March 13, 1957.

[Title of District Court and Cause.]

MINUTE ORDER—MAY 2, 1957

This matter came on regularly this date in open court for hearing on defendant's Motion to Dismiss and Objections to Admissions, L. Charles Johnson appearing as counsel for the plaintiff and C. Ben Martin appearing as counsel for the defendant.

After a discussion by counsel for the respective parties, counsel for the defendant withdrew his Objections to Admissions, and the Motion to Dismiss was overruled by the Court, and thereupon, the defendant was given 5 days to answer, and the matter was set for jury trial, Wednesday, May 15, 1957, at 10 o'clock a.m.

Judge Clark.

[Title of District Court and Cause.]

ANSWER

Comes Now the defendant, New Hampshire Fire Insurance Company, and answering the Amended Complaint of the plaintiff on file herein admits, denies and alleges as follows, to-wit:

I.

This defendant denies each and every allegation, statement and fact contained in the Amended Complaint of the plaintiff except as the same is hereinafter specifically admitted.

II.

Specifically answering paragraphs I and II of the Amended Complaint, this defendant admits that it is a corporation and that it had, prior to the happening of any of the matters or things referred to in the Amended Complaint, complied with the Constitution and laws of the State of Idaho with reference to insurance companies carrying on or transacting business within the State of Idaho and in connection with paragraph II of the Amended Complaint, this defendant affirmatively states that it is a corporation organized and existing under and by virtue of the laws of the State of New Hampshire.

III.

Specifically answering paragraph III of the Amended Complaint, this answering defendant denies that the plaintiff herein, on May 17, 1956, or at any other time, purchased a 1956 Supreme Trailer House 46 feet long bearing Serial No. 6955 but, in this connection alleges that on said date, to-wit: May 17, 1956, said trailer house was the property of the Supreme Trailer Company of Bonham, Texas, and was being convoyed and transported by one Albert Pauls and one Joseph R. Roberts for delivery to the Aetna Trailer Sales of Boise, Idaho, and that when the said Albert Pauls and Joseph R. Roberts arrived at American Falls, Power County, Idaho, with said trailer house they, and each of them, wrongfully, unlawfully, and feloniously appropriated said trailer house to their own use and benefit and purported, under

their own names and signatures, to sell said trailer house to the plaintiff herein for the alleged sum of \$2,000.00 and at said time gave and delivered to the plaintiff herein an alleged Bill of Sale to said trailer house under their own hands and signatures. That said trailer house or home above referred to was, by the said Albert Pauls and Joseph R. Roberts appropriated, stolen, and embezzled. That they had no right, title or interest therein, could not and did not convey title to said trailer house to the plaintiff, that the plaintiff did not ask for or receive and could not receive a lawful or legal Certificate of Title to said trailer house, as required by the laws of the State of Idaho, and that she neither had nor gained any right, title or interest nor the right of possession in or to said trailer house.

IV.

Specifically answering paragraphs IV and V of said Amended Complaint, this answering defendant admits that on June 12, 1956, it issued its policy of insurance to the plaintiff herein insuring the plaintiff against loss by fire and lightning in an amount not to exceed \$5,000.00 but, in this connection, this defendant alleges that it issued its said insurance policy to the plaintiff herein upon the representation of the plaintiff that she was the sole and lawful owner of said trailer, all of which representation was false and untrue and known to the plaintiff to be false and untrue and that said policy was, by reason of said facts and

the laws of the State of Idaho, void of no force or effect from its inception and, in this connection, this defendant alleges that as soon as it ascertained the facts set forth in this Answer it tendered to the plaintiff the full insurance premium previously paid by her and that said tender has remained in effect and this defendant's check for said premium is and has been since the taking of the deposition of the plaintiff herein by this defendant, deposited with and now held by the Clerk of this Court.

V.

Specifically answering paragraphs VI, VII, VIII, and IX of the Amended Complaint, this answering defendant admits that on the 17th day of May, 1956, as well as on the 12th day of June, 1956, said trailer house had a retail value of between the sums of \$5,895.00 and \$6,000.00 and, in this connection, this defendant alleges that the plaintiff knew, at the time of the alleged purchase by her from the said Albert Pauls and Joseph R. Roberts of said trailer house for the alleged or asserted sum of \$2,000.00 that the said trailer house had such value of approximately \$6,000.00 and that common, ordinary care and prudence would have dictated to any reasonable, prudent person that said trailer house was embezzled and stolen and that the said Albert Pauls and Joseph R. Roberts were not, could not, and did not transfer any valid title whatsoever to said trailer house. This defendant further admits that its policy of insurance was

countersigned by its Agent, H. Dean Peterson, at Pocatello, Bannock County, Idaho.

VI.

Specifically answering paragraph X of the Amended Complaint, this defendant admits that a fire occurred in said trailer house on or about September 23, 1956, and that it was damaged and depreciated.

For a Further and Separate Defense to the Amended Complaint of the Plaintiff Herein, This Answering Defendant Alleges:

I.

That immediately upon the consummation of the purported sale of said trailer home to the plaintiff herein by the said Albert Pauls and Joseph R. Roberts, the said Pauls and Roberts, and each of them, left American Falls, Idaho, for parts unknown and that neither the defendant herein, the Supreme Trailer Company, or the Great American Indemnity Company have any knowledge or information as to the whereabouts of either Albert Pauls or Joseph R. Roberts and that immediately upon discovery by the Supreme Trailer Company of the embezzlement of said trailer house by the said Pauls and Roberts, it filed a criminal complaint against said individuals and there is now outstanding a Warrant of Arrest against said individuals which has not been served for the reason that the whereabouts of said Albert Pauls and Joseph R. Roberts are unknown.

II.

That the plaintiff herein neither requested nor received a Certificate of Title to said trailer house, as required by the laws of the State of Idaho and it was not until after the alleged fire in September, 1956, that either the Supreme Trailer Company or the Great American Indemnity Company had any information or knowledge as to the location or whereabouts of said trailer house referred to in plaintiff's Amended Complaint. That in the interim between May, 1956, and September, 1956, the Supreme Trailer Company made claim against the Great American Indemnity Company, who had written a Fidelity Bond on behalf of the said Pauls and Roberts, by reason of the embezzlement and theft of said trailer house and thereafter, and prior to September, 1956, the Great American Indemnity Company paid to the Supreme Trailer Company the loss so suffered and sustained by the Supreme Trailer Company by reason of said embezzlement and, thereupon, became subrogated to the rights of the Supreme Trailer Company. That after said fire occurred and discovery was made of the location of said trailer house by the said Great American Indemnity Company it made demand upon the plaintiff herein for the possession of said trailer house and this defendant is informed and believes and upon such information and belief alleges that the plaintiff herein, pursuant to said demand, did turn over and deliver to the Great American Indemnity Company said trailer house.

Wherefore, this answering defendant prays that the plaintiff take nothing by reason of her Amended Complaint and that this defendant have Judgment for its costs incurred herein and such other relief as this Court may deem just and equitable.

J. F. MARTIN,
C. BEN MARTIN,

By /s/ C. BEN MARTIN,
Attorneys for Plaintiff.

[Endorsed]: Filed June 27, 1957.

[Title of District Court and Cause.]

REQUEST FOR ADMISSIONS

To: New Hampshire Fire Insurance Company:

You Are Hereby Requested, within ten days after the service of this request upon you, which date is fixed by the returned Registered Mail Receipt, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. Q. Do you admit you are the Defendant in this lawsuit?

2. Q. Do you admit that you have an agent resident in Pocatello, Bannock County, State of Idaho; named H. Dean Peterson?

12. Q. Do you admit the value of the trailer house on which you issued Policy No. A 23-80-27 on or about June 12, 1956, had a value of approximately \$6,000.00?

13. Q. Do you admit the trailer house had a value on or about September 22, 1956, of about \$5,895.00?

14. Q. Do you admit the trailer house on which you issued Policy No. A 23-80-27 had a value on or about September 24, 1956, of not more than about \$1,300.00?

15. Q. Do you admit the trailer house on which you issued Policy No. A 23-80-27 was damaged by fire during September, 1956, and prior to September 24, 1956?

* * *

Dated this 25th day of February, 1957.

JOHNSON AND OLSON,

By /s/ L. CHARLES JOHNSON,
Attorneys for Plaintiff.

Affidavit of service by mail attached.

[Endorsed]: Filed February 26, 1957.

[Title of District Court and Cause.]

RESPONSE TO REQUEST
FOR ADMISSIONS

To: Beatrice Nelson, the above-entitled plaintiff,
and to Johnson and Olson, Pocatello, Idaho,
her attorneys.

State of California,
County of San Francisco—ss.

Miley H. Rodgers, Secretary of the above-entitled defendant company, makes admissions, denials, or objections as indicated in the appropriate "Answer" space on the original "Request for Admissions" which was mailed to the defendant's attorneys, as follows:

The defendant admits Requests for Admissions Nos. 1, 2, 12, 13, 14, and 15, and denies Request for Admissions No. 22.

The defendant cannot truthfully either admit or deny Request for Admissions Nos. 10 and 11 because the defendant has no knowledge whatever thereof and, therefore, defendant denies Nos. 10 and 11.

The defendant objects to Request for Admissions Nos. 3, 4, 5, 6, 8, 16, 17, 18, 19, 20, 21 and 23 upon the grounds (a) that the same are irrelevant to any issue and (b) that the same are not proper Requests for Admissions but, rather, should be submitted, if material and relevant, as Interrogatories, and defendant objects to No. 7 for the reasons set

forth in (a) and (b) hereinabove and for the additional reason that the same is not attached to the Request for Admissions nor has it been exhibited to this defendant, and defendant objects to No. 9 for the reasons set forth in (a) and (b) hereinabove and for the additional reason that no document is attached to the Request for Admissions served upon the attorneys for this defendant.

/s/ MILEY H. RODGERS.

Subscribed and sworn to before me this 29th day of March, 1957.

[Seal] /s/ HELEN J. THIEL,
Notary Public for California.

My Commission Expires June 5, 1959.

[Endorsed]: Filed April 2, 1957.

[Title of District Court and Cause.]

REQUEST FOR ADMISSIONS

To: New Hampshire Fire Insurance Company:

You Are Hereby Requested, within twenty days after the service of this request upon you, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. Q. Do you admit New Hampshire Fire Insurance Company did issue an insurance policy on

or about June 12, 1956, to Beatrice Nelson, insuring against loss from fire a certain trailer house, 1956 Supreme No. 6955?

2. Q. Do you admit Defendant, New Hampshire Fire Insurance Company, did have an agent during the year 1956 engaged in the sale of insurance policies?

3. Q. Do you admit that H. Dean Peterson, during the year 1956, was licensed to sell insurance in the State of Idaho for New Hampshire Fire Insurance Company, the Defendant herein?

4. Q. Do you admit that your Company, by and through its agent, H. Dean Peterson, issued policy number A 23-80-27 to Beatrice Nelson, the Plaintiff herein, on or about June 12, 1956?

5. Q. Do you admit that Beatrice Nelson had paid to the Defendant, New Hampshire Fire Insurance Company, a premium on policy number A 23-80-27?

6. Q. Do you admit that premium or premiums paid by Beatrice Nelson during 1956 were sufficient so that the premium on said policy number A 23-80-27 was paid in advance covering the period from June 12, 1956, to September 30, 1956, inclusive?

JOHNSON AND OLSON,

By /s/ L. CHARLES JOHNSON,
Attorneys for Plaintiff.

[Endorsed]: Filed August 14, 1957.

[Title of District Court and Cause.]

ANSWER TO REQUEST FOR
ADMISSIONS

Comes Now the defendant and in reply to the request for admissions to the six interrogatories submitted either answer or object thereto, as follows:

To interrogatory No. 1:

A. This defendant admits its Agent issued what purported to be its insurance policy to Beatrice Nelson but denies that said policy had any force or effect or ever was valid or enforceable or that any liability exists on the part of the defendant by reason thereof.

To interrogatory No. 2.

A. Yes.

To interrogatory No. 3.

A. Yes.

To interrogatory No. 4.

A. We admit H. Dean Peterson prepared and delivered an insurance policy to Beatrice Nelson but contend that said policy had no force or effect and that said Beatrice Nelson had no insurable interest in the property alleged to be or sought to be insured.

To interrogatory No. 5.

A. We admit that Beatrice Nelson paid to the agent H. Dean Peterson a premium but, in this connection state that upon ascertaining the facts

in connection with the issuance of this policy and of the noninsurability of Beatrice Nelson in the property alleged to have been covered, we tendered back to the said Beatrice Nelson the said premium, which tender is now with the Clerk of this Court.

To interrogatory No. 6.

A. No.

J. F. MARTIN,
C. BEN MARTIN,

By /s/ J. F. MARTIN,
Attorneys for Defendant.

[Endorsed]: Filed August 20, 1957.

[Title of District Court and Cause.]

REQUEST FOR ADMISSIONS

To: New Hampshire Fire Insurance Company, the
above-named defendant:

You Are Hereby Requested, within ten (10) days after the service of this Request upon you, through your attorney, to make the following admissions for the purposes of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

1. That each of the following documents, a photostatic copy of each with typed signatures exhibited with this request, is genuine.

(b) A letter dated November 3, 1956, on the stationery of the General Adjustment Bureau, Inc., addressed to Mr. L. Charles Johnson, and bearing the ink and typewritten signature of S. S. Smith, Branch Manager.

2. That each of the following statements is true.

* * *

(c) That the defendant mailed the original of said letter to Johnson and Olson, attorneys at law, Carlson Building, Pocatello, Idaho.

* * *

(h) At all times in the Complaint mentioned you had an agent resident in Pocatello, Bannock County, State of Idaho named H. Dean Peterson.

(i) That this agent, H. Dean Peterson, counter-signed insurance policy number A 23-80-27.

* * *

Dated this second day of October, 1957.

JOHNSON AND OLSON,

By /s/ L. CHARLES JOHNSON,
Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed October 4, 1957.

[Title of District Court and Cause.]

ANSWER TO REQUEST FOR ADMISSIONS

To: Beatrice Nelson, the above-entitled plaintiff,
and to Johnson & Olson, her attorneys of
record.

Answering the request for admissions served upon
this defendant, this answering defendant submits
the following answers:

1. That each of the following documents, a photo-
static copy of each with typed signatures exhibited
with this request, is genuine.

* * *

(b) Answer: Yes.

2. That each of the following statements is true.

(c) Answer: Yes.

* * *

(h) Answer: Yes.

(i) Answer: Yes.

/s/ M. H. RODGERS.

Duly verified.

[Endorsed]: Filed November 12, 1957.

[Title of District Court and Cause.]

INTERROGATORIES AND ANSWER TO INTERROGATORIES

The defendant New Hampshire Fire Insurance
Company now answers the interrogatories submitted
by the plaintiff herein and for answer thereto states:

Interrogatory No. 1—Is M. H. Rodgers an officer of your company?

Answer: Yes.

Interrogatory No. 2—What is his title?

Answer: Secretary.

Interrogatory No. 3—What was his title on November 2, 1956?

Answer: Secretary.

Interrogatory No. 4—Was he an officer of your company during September, 1956?

Answer: Yes.

Interrogatory No. 5—What was his title during September, 1956?

Answer: Secretary.

Interrogatory No. 6—Did M. H. Rodgers, an officer of your company, send a letter to Johnson and Olson under date of November 2, 1956, touching on policy number: A 23-80-27 and on insured by name of Nelson?

Answer: Yes.

Interrogatory No. 7—Detail completely the contents of such letter.

Answer: A copy of that letter is hereunto attached and in explanation thereof I desire to state that while the letter purports to be dictated by myself, it was in fact dictated by J. J. Smith, an adjuster in our office in San Francisco, but I am not attempting to avoid or repudiate any statement

made in the letter merely by reason of the fact that Mr. Smith wrote it. The actual facts are that at the time this letter was written we did not have the information which was later developed; namely, (a), that this trailer has been embezzled by Albert Pauls and Joseph Roberts, and particularly Joseph Roberts, because as we understand it, Supreme Trailer Company has no idea yet as to who Albert Pauls is; (b) that Beatrice Nelson came into possession of this house trailer by paying these two men \$2,000.00 for it and that these men then embezzled the \$2,000.00 from the Supreme Trailer Company; (c) that Beatrice Nelson did not obtain a bill of sale from the Supreme Trailer Company nor did she have a certificate of title to the trailer. All of these facts were developed later by our Idaho attorneys, and when the facts were developed, we tendered back to Beatrice Nelson the full premium which she paid us. Had we known at the time this policy was written of the above facts and that Beatrice Nelson had no right, title, claim or interest in or to this trailer, we would not have written this policy.

Interrogatory No. 8—Is the signature of such letter that of an officer of your corporation?

Answer: The photostat of the letter which you refer to in Interrogatories Nos. 8 and 9 bears a typewritten name "M. H. Rodgers" and it is impossible to answer 8 or 9 because no signature shows. We are attaching this photostat to these answers for the purpose of showing that no signature appears.

Interrogatory No. 9—Was a letter under date of November 2, 1956, bearing the letterhead "The New Hampshire Group" and the signature in ink "M. H. Rodgers," and the typed signature "M. H. Rogers Secretary" sent to Johnson and Olson by you and in the words and figures as the photostatic copy attached to Request for Admissions served on you this date?

Answer: This interrogatory is answered in interrogatory No. 8.

Interrogatory No. 10—Was such letter sent by you through your corporate agent to Johnson and Olson regarding the fire insurance claim of Beatrice Nelson, the plaintiff?

Answer: Yes.

Interrogatory No. 11—Is the signature on the original of such letter a genuine signature of an officer of your corporation?

Answer: I refer back to the answer to Interrogatory No. 8 and to the photostatic copy of the letter, because no signature appears thereon and the original of the letter has not been submitted to us for inspection.

Interrogatory No. 12—Was the letter under date of November 2, 1956, from M. H. Rodgers, an officer of your corporation, to Johnson and Olson, a letter sent in the normal course of the business of your corporation regarding a claim by Beatrice Nelson?

Answer: Yes.

Interrogatory No. 13—Was the true market value of the trailer house Supreme 6955, involved in this

lawsuit, on or about September 22, 1957, immediately preceding the fire causing damage, about \$5,895.00?

Answer: We have no way whatsoever of answering this question. We did not see the trailer and neither then nor now know anything about it.

Interrogatory No. 14—Was the true market value of the trailer house, Supreme 6955, involved in this lawsuit, on or about September 24, 1956, immediately after the damage by said fire not more than \$1,300.00.

Answer: Again, we know nothing whatsoever about the value of the trailer after the alleged fire. All we know is that we were informed by the General Adjustment Bureau, Inc., at Pocatello, Idaho, that the highest bid that they were able to receive was \$1,300.00.

Interrogatory No. 15—Is the letter under date of November 2, 1956, a photostatic copy of which was attached to the Request for Admissions served on you this date, a letter bearing the signature of an officer of your corporation?

Answer: Again, we must refer to our answer to Interrogatory No. 8 for the reason that the photostatic copy shows no signature, but as we have said, Mr. Rodgers did send a letter to Johnson and Olson under the date of November 2, 1956, and we firmly believe that the photostatic copy is a copy of the letter which was sent by Mr. Rodgers out of the San Francisco office.

Interrogatory No. 16—Was such letter sent by your corporation to the attorneys for Beatrice Nelson regarding her claim for fire damage on a house trailer?

Answer: Yes.

Interrogatory No. 17—Would the premium paid by Beatrice Nelson, on policy A 23-80-27, covering Supreme trailer 6955, have been sufficient in amount had it not been tendered back to plaintiff so that the policy would have been otherwise in full force and effect on the date of the fire damage, to wit: September 24, 1956, had there been an insurable interest in said Beatrice Nelson both at the time that the policy was issued and at the time of the damage caused by fire?

Answer: If you mean by this question that had Beatrice Nelson had an insurable interest in this trailer at the time the policy was issued and at the time the loss occurred, then the answer is that the premium which she paid and which was later tendered back was sufficient to pay for the policy as issued.

Interrogatory No. 18—During the entire year 1956 and at present is Bryan and Company at Pocatello, Bannock County, Idaho, one of your Idaho agents?

Answer: The answer to this question is no, but we do not want to mislead anyone by this statement because corporations are not licensed in Idaho to write insurance. The licenses are issued in the names of individuals who may be connected in some manner with the corporations.

Interrogatory No. 19—Detail specifically the authority of such agent Bryan and Company and whether or not this authority existed during the entire year 1956.

Answer: As stated above, Bryan and Company was not an agent of this defendant in 1956 or at any other time, and it had no authority whatsoever to either act for or on behalf of this defendant.

Interrogatory No. 20—Detail specifically the authority of General Adjustment Bureau and S. S. Smith as your agents.

Answer: In this particular case S. S. Smith, who was the Branch Manager of the General Adjustment Bureau, Inc., at Pocatello, Idaho, at the time the loss occurred in this particular case was employed by this defendant to investigate the loss and report his findings to this defendant. That was the extent of his authority and the authority of General Adjustment Bureau, Inc.

Signature and endorsement on Interrogatories:

JOHNSON & OLSON,

By /s/ L. CHARLES JOHNSON,

Attorneys for Plaintiff.

[Endorsed]: Filed October 4, 1957.

Signature and endorsement on Answers to Interrogatories:

By /s/ M. H. RODGERS.

[Endorsed]: Filed November 12, 1957.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on regularly to be heard before the Court, on November 23, 1957, the parties to this action having waived a trial by Jury, plaintiff being represented by L. Charles Johnson, of the law firm of Johnson & Olson, and the defendant being represented by C. Ben Martin, of the law firm of J. F. Martin and C. Ben Martin. Testimony, both oral and documentary, having been introduced and the parties having presented Briefs to the Court and submitted the cause for consideration and decision, and the Court, being fully advised in the premises, now makes and files the following Findings of Fact and Conclusions of Law.

Findings of Fact

The Court finds:

I.

That the plaintiff was at the time of the filing of the complaint, and for a long time prior thereto had been, a citizen of the State of Idaho, residing at American Falls, in said state.

II.

That the defendant is and at the time of the filing of the complaint was and for a long period of time prior thereto had been a corporation organized and existing under and by virtue of the laws of the State of New Hampshire and was organized for the pur-

pose, among other things, of writing policies of fire insurance and that prior to any of the matters and things referred to herein had complied with the Constitution and the laws of the State of Idaho with reference to foreign corporations doing business within said State.

III.

That on May 17, 1956, the Supreme Trailer Company, of Bonham, Texas, was the owner of a 1956 Supreme Trailer House, being 46 feet in length, with Serial No. 6955, and that, at said time, said trailer house was in the possession of one Joseph Roberts, an employee of the Supreme Trailer Company and Southwest Mobile Homes Sales Corporation for the purpose of delivering said trailer house to the Aetna Trailer Sales Company at Boise, Idaho, the latter having contracted with the Supreme Trailer Company and Southwest Mobile Homes Sales Corporation to purchase the same and it was being delivered in harmony with such agreement to purchase. That on the said May 17, 1956, there was with the said Joseph Roberts a certain Albert Pauls, the latter being unknown to the officials of either Supreme Trailer Company or Southwest Mobile Homes Sales Corporation and that he had no connection whatever with either of the last two mentioned companies.

IV.

That en route from Bonham, Texas, to American Falls, Idaho, the trailer house above referred to was slightly damaged, said damage being minimal and not affecting the value thereof.

V.

That for approximately six months prior to May 17, 1956, the plaintiff herein had been in the market for a trailer house, had made numerous inquiries as to makes and prices thereof and, on May 17, 1956, was fully conversant with the prices and values of trailer houses.

VI.

That on or about May 17, 1956, the said Joseph Roberts and Albert Pauls arrived in American Falls, Idaho with said trailer house. That while in American Falls they met the plaintiff herein, Beatrice Nelson, and negotiated with her for the sale and purchase of said trailer house and purported to sell said trailer house to the plaintiff for the sum of \$2,000.00, the plaintiff giving her check to the said Roberts and Pauls and the said Roberts and Pauls executing a Bill of Sale from themselves to the plaintiff herein. That said Bill of Sale did not purport to be a Bill of Sale from the Supreme Trailer Company or Southwest Mobile Homes Sales Corporation and neither the said Roberts nor Pauls had any right, title or interest in said trailer house or any right to sell or dispose of the same and that the plaintiff knew or by the exercise of any degree of care or caution should have known that neither the said Roberts nor the said Pauls had any right, title or interest in or to said trailer house or any right to sell or dispose of the same and that the plaintiff herein was not an innocent purchaser of said trailer house or a purchaser for value. That, at the time of said purported sale and delivery to the plaintiff

herein of said trailer house, the wholesale value of said trailer house was \$4,276.70 and it had a retail value of approximately \$5,895.00.

VII.

That the plaintiff, at no time, made any inquiry of the Supreme Trailer Company or Southwest Mobile Homes Sales Corporation as to the authority of the said Roberts and Pauls to sell said trailer house nor did she ever receive from either of the latter, a Certificate of Sale enabling her to obtain from the State of Idaho, a Certificate of Title thereto, as required by the laws of the State of Idaho.

VIII.

That on or about June 12, 1956, the plaintiff herein applied to the defendant, by and through its local agent at Pocatello, Idaho, for a policy of insurance for \$5,000.00, covering the loss by fire or theft, on said trailer house but neither at that time nor at any other time did she disclose to the defendant the circumstances surrounding the purported purchase by her of the trailer house nor the price paid therefor by her. That the policy of insurance was issued by the defendant herein in ignorance of the facts and circumstances surrounding the purported purchase of said trailer house.

IX.

That at the time the plaintiff applied for and procured said policy of insurance, she had no insurable interest in said trailer house.

X.

That thereafter, and on or about September 23, 1956, a fire occurred in said trailer house, damaging the same and reducing the value thereof to approximately \$1,200.00. That plaintiff made Proof of Loss to the defendant and the defendant, upon investigating the facts and circumstances surrounding the purported purchase of the trailer house by the plaintiff denied liability under its policy and tendered back to the plaintiff the premium she had previously paid.

XI.

That the plaintiff had no insurable interest in said trailer house at the time of the occurrence of the fire and has no claim whatsoever upon or against the defendant by reason of said insurance policy.

Conclusions of Law

From the foregoing Findings of Fact, the Court concludes, as a matter of law:

I.

That the purported sale of the trailer house from Joseph Roberts and Albert Pauls to the plaintiff, on May 17, 1956, was utterly void and that the plaintiff gained no right, title or interest in or to said trailer house by reason of said purported sale.

II.

That the plaintiff had no insurable interest in said trailer house at the time of the issuance and

delivery to her of the insurance policy issued by the defendant herein.

III.

That the plaintiff had no insurable interest in the trailer house at the time of its damage or destruction by fire on or about September 23, 1956.

IV.

That the defendant has no liability whatsoever to the plaintiff by reason of the issuance, by it, to the plaintiff of its policy of insurance.

V.

That the plaintiff is not entitled to recover from the defendant any sum whatsoever.

VI.

That the defendant is entitled to Judgment against the plaintiff for its costs incurred herein.

Done and dated in open Court this 17th day of February, 1958.

/s/ FRED M. TAYLOR,
U. S. District Judge.

Lodged February 11, 1958.

[Endorsed]: Filed February 17, 1958.

In the United States District Court in and for the
District of Idaho, Eastern Division

Civil No. 2012

BEATRICE NELSON,

Plaintiff,

vs.

NEW HAMPSHIRE FIRE INSURANCE COM-
PANY,

Defendant.

JUDGMENT

This cause coming on regularly to be heard before the Court sitting without a Jury, and the Court being fully advised in the premises and having made and filed its Findings of Fact and Conclusions of Law,

Now, Therefore, It Is Hereby Ordered and Adjudged, and this Does Order and Adjudge that the plaintiff take nothing from the defendant by virtue of her Amended Complaint and that the defendant have Judgment against the plaintiff for its costs incurred herein and taxed in the sum of \$138.05.

Done and dated in open Court this 17th day of February, 1958.

/s/ FRED M. TAYLOR,
U. S. District Judge.

Lodged February 11, 1958.

[Endorsed]: Filed February 17, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Beatrice Nelson, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final Judgment entered and filed against her in this action on the seventeenth day of February, 1958, both the entire such Judgment and all parts thereof.

JOHNSON AND OLSON,

By /s/ L. CHARLES JOHNSON,

/s/ GEORGE PHILLIPS,

Attorneys for Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed March 17, 1958.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

We, the undersigned, jointly and severally are and acknowledge that we and our personal representatives, successors or assigns, are bound to pay to New Hampshire Fire Insurance Company, defendant, the sum of Two Hundred and Fifty and no/100 (\$250.00) Dollars;

The condition of this bond is that, whereas the plaintiff has appealed to the United States Court of

Appeals for the Ninth Circuit by Notice of Appeal filed herewith on the same day as this bond, from the Judgment of this Court entered on or about February 17, 1958, if the plaintiff, below signed, shall pay all costs adjudged against her if the appeal is dismissed or the Judgment affirmed or such costs as the appellate Court may award if the Judgment is modified, then this bond is to be void, but if the plaintiff fails to perform these conditions or any one of them the payment of the amount of this bond shall be due forthwith.

/s/ BEATRICE NELSON,
Plaintiff.

[Seal]: UNITED STATES FIDELITY AND
GUARANTY COMPANY,

By /s/ T. F. TERRELL,
Its Attorney in Fact
and Resident Agent.

Countersigned By:

/s/ T. F. TERRELL,
Agent, Pocatello, Idaho.

Beatrice Nelson signed and acknowledged the above Bond for Costs before me this fourteenth day of March, 1958.

[Seal] /s/ GERALD W. OLSON,
Notary Public in and for the
State of Idaho.

[Endorsed]: Filed March 17, 1958.

In the District Court of the United States in and
for the District of Idaho, Eastern Division
No. 2012—E

BEATRICE NELSON,

Plaintiff,

vs.

NEW HAMPSHIRE FIRE INSURANCE COM-
PANY,

Defendant.

November 23, 1957—10:00 A.M.

Appearances:

For the Plaintiff:

JOHNSON AND OLSON, By
L. CHARLES JOHNSON,
Pocatello, Idaho.

For the Defendant:

MARTIN & MARTIN, By
C. BEN MARTIN,
Boise, Idaho.

The Clerk: Beatrice Nelson vs. New Hampshire
Fire Insurance Company No. 2012 for trial.

The Court: Are you ready to proceed, gentle-
men?

Mr. Martin: Yes, your Honor.

Mr. Johnson: Yes, your Honor.

The Court: You may proceed.

Mr. Johnson: If it please the Court, at this time,
the Court has signed an order allowing an amend-
ment by the Plaintiff, to paragraph 4. the inter-
lineation reading: "That such insurance was in full

force and effect on the date of said loss hereinafter alleged." After a stipulation of counsel, could I see if that interlineation has been made, and if it has not, add that?

The Court: If it has not been made, it will be made. That is to the amended complaint?

Mr. Johnson: Yes, your Honor.

At this time, your Honor, we could call the Clerk. We want to put in the interrogatories and admissions in evidence. If counsel will stipulate, we are going to put in certain admissions and interrogatories, part of the official file.

Mr. Martin: Now, which ones do you have in mind, counsel?

Mr. Johnson: The request for the admission of Plaintiff, dated October 2, 1957.

Mr. Martin: Yes.

Mr. Johnson: The answer of defendant through M. H. Rogers, which was verified November 9, 1957, and filed November 12, 1957.

Mr. Martin: Yes, I will so stipulate.

Mr. Johnson: And the request of the plaintiff, filed in June, 1957, the request for admissions, filed June——

Mr. Martin: Which ones are those, the one you have sent me, or the ones dated in blank?

Mr. Johnson: The ones that you have an acknowledgement of service, dated in June.

Mr. Martin: Yes.

Mr. Johnson: And would counsel stipulate that this was received by him?

Mr. Martin: Yes.

Mr. Johnson: And we would like to put in evidence the answers to the request for admissions, which are undated.

The Court: What date were they filed?

Mr. Johnson: It would have been in June, 1957, the first answer that the defendant admitted the insurance policy to Beatrice Nelson, that it was in force. [5*]

Mr. Martin: Yes.

Mr. Johnson: And the request for the admissions, filed in February, 1957, by the plaintiff and which were served and filed in February, 1957.

Mr. Martin: About the 26th of February.

Mr. Johnson: In that vicinity, yes, 26th or 27th. The first interrogatory being, "Do you admit that you are the defendant in this lawsuit?"

Mr. Martin: Yes. May I inquire, your Honor, as to the date of the filing of the amended complaint in this matter?

The Court: It was filed February 26, 1957.

Mr. Martin: What date was the interrogatory, the request for the admission, "Do you admit that you are the defendant in this lawsuit"? I do not see that one, was that prior to the amended complaint or after?

Mr. Johnson: That was after.

The Court: That was February 26, 1957.

Mr. Johnson: Yes, it was filed after it.

Mr. Martin: If the Court please, was that filed prior or after the amended complaint?

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

The Court: Apparently on the same date. There is no way of determining which was filed first. I do not see how it would make any difference.

Mr. Martin: In that event, your Honor, I cannot [6] stipulate to the original for the reason it is not shown, or determined that the request for admissions were filed after the filing of an amended complaint, and if filed prior, they have no bearing on the matter, the amended complaint starts this matter entirely anew.

The Court: I don't see how it would make any difference.

Mr. Martin: I don't think it makes a great deal of difference.

Mr. Johnson: Would you stipulate to the admission of that?

Mr. Martin: Yes.

Mr. Johnson: Being the request for admissions, then, filed on the 26th day of February, and the response to the request which was sworn to on March 29, by M. H. Rogers, for the defendant?

Mr. Martin: Yes.

Mr. Johnson: The interrogatory of plaintiff of October 3, 1957?

Mr. Martin: October 3, 1957.

The Court: Your response that you were talking about on the 29th of March were filed on April 2, 1957.

Mr. Johnson: Thank you, your Honor. And the request for interrogatories, directed by the plaintiff to the defendant, dated October 3, 1957, served immediately [7] thereafter and filed?

Mr. Martin: Yes.

Mr. Johnson: And the answer to such interrogatory which were verified on November 9, and filed November 12, 1957?

Mr. Martin: Yes.

Mr. Johnson: We therefore offer the requests and the answers in evidence.

The Court: On the stipulation of counsel they will be considered admitted.

Mr. Johnson: At this time I see no reason to read the contents.

Mr. Martin: For the record, would the Court prefer that we mark those as exhibits in this cause?

The Court: If you have them sufficiently identified, it will not be necessary.

Mr. Johnson: At this time, with the stipulation of counsel, could we have the deposition you took broken open for the purpose of securing the exhibits that are in that?

Mr. Martin: Yes, I will agree to that. Will you agree that the deposition of Robert D. Franks and Leonard Riley be broken open for the purpose that the photostats of the invoice may be used?

Mr. Johnson: For examination?

Mr. Martin: Yes. [8]

Mr. Johnson: And the deposition of Beatrice Nelson.

The Court: They may be published.

Mr. Martin: I understand that the deposition of Beatrice Nelson and Leonard Riley are published.

The Court: Yes.

Mr. Johnson: May it now be stipulated by and

between counsel that the statement, purporting to be the——

The Court: Better mark them as exhibits and then identify them.

The Clerk: Being marked as Plaintiff's Exhibits Nos. 1 and 2. The Proof of Loss is No. 1, and the Amended Statement is No. 2.

(The documents referred to were marked Plaintiff's Exhibits Nos. 1 and 2 for identification.)

Mr. Johnson: Be it stipulated by and between counsel that Exhibit 1 and the sworn statement, signed on October 18, 1956, be admitted as Plaintiff's Exhibit No. 1 and Plaintiff's Exhibit No. 2, both coming from the files of the defendant's attorney, and Plaintiff's Exhibit No. 1 was mailed to the defendant's attorney around October 18, 1956. Number 2 was mailed to the defendant on October 31, 1956.

Mr. Martin: I will agree, providing the stipulation be changed with respect to the mailing. I don't know [9] whether it was mailed or not. We did receive it.

Mr. Johnson: About that date?

Mr. Martin: In due course.

The Court: It may be admitted with that understanding.

(The documents referred to were marked Plaintiff's Exhibits No. 1 and No. 2 and were received in evidence.)

Mr. Johnson: At this time we would like to call Mr. Dean Peterson for cross-examination under Rule 43.

The Court: Very well.

H. DEAN PETERSON

a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Dean Peterson.

Cross-Examination

By Mr. Johnson:

Q. Would you state your full name, please?

A. I sign my name H. Dean Peterson. My full name is Harold Dean Peterson.

Q. And what was your position, or occupation, on or about June 12, 1956?

A. Insurance agent.

Q. For what company or companies?

A. For Bryan & Company, a local agency. [10]

Q. And were you an agent for the New Hampshire Fire Insurance Company? A. Yes.

Mr. Johnson: Would the Clerk mark this as Plaintiff's Exhibit No. 3 for identification, please?

The Clerk: Marked Plaintiff's Exhibit No. 3 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 3 for identification.)

Q. (By Mr. Johnson): Looking at Plaintiff's

(Testimony of H. Dean Peterson.)

Exhibit No. 3 for identification, would you state to the Court if that is your signature which appears on the bottom of the first page? A. It is.

Q. And is that your signature which appears upon the Endorsement thereto? A. It is.

Q. Are you familiar with this policy of insurance? A. Yes.

Q. Was it issued to Beatrice Nelson?

Mr. Martin: Now just a minute. Your Honor, we object to this type of questioning in that as we understand the rule calling for cross-examination under the statute, is for the purpose of getting information which is not [11] in the possession of the plaintiff and the plaintiff has not accessibility to that information. In this instance we believe the plaintiff can testify as to whether or not she received that or purchased and we object to this questioning.

The Court: I seriously doubt whether he comes in the category of a person subject to cross-examination under the Rule. Is there any question about the insurance policy?

Mr. Martin: No, your Honor, we will admit that that policy was issued to her.

The Court: Very well, offer it in evidence.

Mr. Johnson: We offer this in evidence.

The Court: If there is no objection it will be admitted. As I understand it, you are objecting to this man being subject to cross-examination under Rule 43?

(Testimony of H. Dean Peterson.)

(The document referred to was marked Plaintiff's Exhibit No. 3 and was received in evidence.)

Mr. Martin: That is correct, your Honor.

Mr. Johnson: Therefore, we have no further questions to ask him.

The Court: Very well. That is all, sir.

(The witness left the stand.)

Mr. Johnson: At this time we will call the Plaintiff, Beatrice Nelson. [12]

BEATRICE NELSON

plaintiff, called as a witness in her own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Beatrice Nelson.

Direct Examination

By Mr. Johnson:

Q. Would you state your full name, please?

A. Beatrice Nelson.

Q. Are you the plaintiff in this law suit?

A. Yes, sir.

Q. Did you come to purchase a trailer house in 1956?

A. Yes, sir.

Q. Would you state to the Court the full details concerning that purchase?

(Testimony of Beatrice Nelson.)

Mr. Martin: We object to the generalization of the question, your Honor.

The Court: She may answer if she will fix the time.

The Witness: Explain the situation and everything that I——

Q. (By Mr. Johnson): Tell the Court everything concerning the purchase of that trailer that you remember. [13]

A. Well, Mr. Bates came to the coffee shop on the morning of the 17th and told me there was some men that had a trailer house that they wanted to sell. He knew I had been looking for one. I asked him where they were and he said at his place of business having breakfast. We had a cup of coffee and I got in his car and drove out to his place of business and picked up the men and went to look at the trailer. I examined the trailer and I asked these two gentlemen if they had the authority to sell it. They said that they did have and that they would go before a lawyer and draw up a Bill of Sale for me.

Mr. Bates, these two gentlemen, and I went over to the office of Mr. Loofburrow's, he drew up the Bill of Sale, went over to my place of business and I made the check out and paid them for it, and they went over to the bank and cashed the check and came back to my place of business and bought a couple of drinks and left.

Mr. Johnson: Would you mark this Plaintiff's Exhibit No. 4 for identification?

(Testimony of Beatrice Nelson.)

(The document referred to was marked Plaintiff's Exhibit No. 4 for identification.)

Q. (By Mr. Johnson): Mrs. Nelson, handing you Plaintiff's Exhibit 4 for identification, is that the Bill of Sale that you received? [14]

A. Yes, sir.

Q. And was that subsequently recorded?

A. Yes, sir.

Q. And the recording details appear thereon?

A. Yes, sir.

Mr. Johnson: We now offer this as Plaintiff's Exhibit 4.

Mr. Martin: No objection, your Honor.

The Court: It may be admitted.

(The document referred to was marked Plaintiff's Exhibit No. 4 and was received in evidence.)

Mr. Johnson: Would you mark this instrument as Plaintiff's Exhibit No. 5 for identification?

(The document referred to was marked Plaintiff's Exhibit No. 5 for identification.)

Q. (By Mr. Johnson): Mrs. Nelson, showing you Plaintiff's Exhibit No. 5 for identification, will you state to the Court if that is your name thereon?

A. Yes, sir.

Q. And is that the check which you gave to the two gentlemen? A. Yes, sir.

(Testimony of Beatrice Nelson.)

Q. And it eventually returned to you with your bank statement, is that correct? [15]

A. Yes, sir.

Mr. Johnson: We now offer Plaintiff's Exhibit 5 for identification in evidence as Plaintiff's Exhibit No. 5.

Mr. Martin: No objection, your Honor.

The Court: It may be admitted.

(The document referred to was marked Plaintiff's Exhibit No. 5 and was received in evidence.)

Q. (By Mr. Johnson): At the time the gentlemen talked to you, did they have any papers in their possession? A. Yes, sir.

Q. Did you receive those papers from them?

A. Yes, sir.

Mr. Johnson: Would you mark this paper as Plaintiff's Exhibit 6 for identification, and this one as Plaintiff's Exhibit 7 for identification?

(The documents referred to were marked Plaintiff's Exhibits Nos. 6 and 7 for identification.)

Q. (By Mr. Johnson): Handing you Plaintiff's Exhibits 6 and 7, were those papers given to you by these gentlemen? A. Yes, sir.

The Court: You keep referring to the gentlemen——

Mr. Johnson: Yes; excuse me.

The Court: ——can we identify those gentlemen in [16] some way?

Q. (By Mr. Johnson): Were the names of those

(Testimony of Beatrice Nelson.)

gentlemen Albert Pauls and Joseph Roberts?

A. It was.

Q. That was their names? A. Yes, sir.

Q. And these were given to you by Albert Pauls and Joseph Roberts? A. Yes, sir.

Mr. Johnson: We now offer Plaintiff's Exhibits Nos. 6 and 7 for identification as Plaintiff's Exhibits Nos. 6 and 7 in evidence.

Mr. Martin: No objections.

The Court: Exhibits Nos. 6 and 7 may be admitted. I don't know what they are.

(The documents referred to were marked Plaintiff's Exhibits Nos. 6 and 7 and were received in evidence.)

Mr. Johnson: Number 6, your Honor, being an invoice, and No. 7 being the final inspection sheet of Supreme Trailer 6955.

Q. (By Mr. Johnson): Regarding this trailer after this date of May 17, 1956, would you explain to the Court what you did, if anything in the purchase of insurance? [17]

A. Well, I called Bryan & Bryan Company in Pocatello and told them that I had purchased the trailer house and would like to have it insured and they sent Mr. Peterson out, oh, in a couple of days.

Q. He was the man that just testified?

A. Yes.

Q. And what was said at that time, if anything, between you and Mr. Peterson?

A. In regards to the insurance?

Q. In relation—just relate to the Court the con-

(Testimony of Beatrice Nelson.)

versation that you had with Mr. Peterson.

A. Mr. Peterson came down there and I was at the club, and he came down and told me he had come down to write up the insurance and he asked me where the papers was on it and I told him they was up at the trailer house. We walked up and were going in and get them and he said, "Well, all I need is the serial number." And he got that right off the front of the trailer. And he asked me what valuation I wanted written up on it. I said, "Well, I don't know."

He said, "Well, it should be worth about \$6,000."

And I said, "Well, I don't have near that much in it."

He said, "Well, we better write it for five, [18] anyway.

And I said, "Well, I don't have that much in it either." And I explained to him that it was going through with a convoy and these two gentlemen had wrecked the trailer and offered to sell it to me because it would be rejected when they got to Boise where they were taking it and they would have to trail it back to Texas. And they gave me a good—what I thought was a good buy on it—and so I had purchased it, and I told him the amount I had purchased it for.

He said, "Well, we better write the insurance for five-thousand." And he said, "When you get moved in it and get your furniture or whatever you are going to put in it." I told him I planned to put—on getting a television set and he said that we would estimate the furniture and fixtures and add a clause

(Testimony of Beatrice Nelson.)

covering those, which we never did get around to do, it burned before we ever did that.

Q. And then what happened, if anything, after he said that he would write up this other on the furniture?

A. Well, he just went on home and he wrote up the insurance and mailed it out to me a few days later, I don't just remember when, and I mailed them in a check for it—for \$5,000 just on the trailer. The interior was never insured.

Q. And you mailed the check in to—— [19]

A. Bryan and Bryan.

Q. What happened after that—excuse me, Mrs. Nelson—would you state to the Court, after you purchased this trailer on May 17, when you moved into the trailer house itself?

A. Well, I think I had only been in it for about six weeks before it burned. There, on the trailer court they didn't have a place to put it on the sewer line. I was waiting for this man that owns the park to get a sewer line built to the trailer so I could move in it.

Q. And then you moved in about six weeks——

A. I'd say five or six weeks before it burned. I had been living in it about that long.

Q. And do you remember the date that fire occurred to this trailer house? A. Yes, sir.

Q. And what was that date?

A. September the 23rd.

Q. And would you explain to the Court what happened at that time, if anything, what you re-

(Testimony of Beatrice Nelson.)

member about the fire and what subsequently occurred?

A. Well, at the time of the fire I was out to my daughters, about sixteen miles out at Rockland. Her phone rang and she went to the phone and she said, "Mother, your trailer house is on fire." And we got her two little [20] youngsters and got in the car and drove to town and by the time we got in town, the fire was extinguished.

Q. What did you do then, if anything?

A. Called Bryan and Company and told them that my trailer house had burned up and I would like to have them come out and look at it and Mr. Peterson and Mr. Smith came out.

Q. Mr. Dean Peterson, the person that just testified here? A. That is right.

Q. Who is Mr. Smith?

A. He made me acquainted as Mr. Dan Smith, an adjuster.

Q. And then what happened, if anything?

A. Well, they examined the trailer, and if I remember rightly he said, "It looks like to me it's a total loss." That is about all that was said.

Q. What did Stan Smith say, if anything?

A. Well, he said, "It looks bad to me, too."

Q. And then what happened?

A. They left and went back to Pocatello.

Q. Do you remember what happened to your first Proof of Loss, if anything, was that denied or accepted? A. It was accepted.

(Testimony of Beatrice Nelson.)

Q. Excuse me, payment on the Proof of [21] Loss?

A. The payment, it was denied, the payment was denied.

Q. Do you remember when that was and when you first heard about that through——

A. The denial?

Q. Yes.

A. Oh, I can't remember the date—I can't remember the date but Mr. Peterson and Mr. Smith came down to my trailer and told me that it would be denied.

Q. Do you remember in what month that could have been?

A. Well, it was about December, I can't be sure.

Q. You say Mr. Peterson and Mr. Smith came down and told you there would be no payment?

A. Yes.

Q. And when you mentioned Mr. Bates, what is his first name? A. Dan Bates.

Q. And at that time where was he residing, do you know?

A. At the Sagebrush Inn, he was running the Sagebrush Inn.

Q. In American Falls?

A. Yes, well, just outside the city limits of American Falls. [22]

Q. After this fire loss occurred, what happened to the trailer house, if anything, how long did it remain where it was standing?

Mr. Martin: If the Court please, we object to

(Testimony of Beatrice Nelson.)

that as being irrelevant and immaterial.

The Court: She may answer. I don't know that it is important.

Mr. Johnson: What I mean to do, your Honor, is to connect the condition of the trailer in the different locations from other witnesses, in other words, if it was in the same condition when it was moved off the park.

Q. (By Mr. Johnson): Mrs. Nelson, did you ever see the trailer that burned, this Supreme No. 6955, on the lot of Eastern Idaho Trailer Sales, after the fire? A. I did.

Q. And that was some months after the fire?

A. Yes.

Q. And did you look at the trailer at that time?

A. Yes, sir.

Q. And was there any difference in the condition of the trailer at that time than immediately following the fire—after the fire was extinguished?

A. No, sir.

Q. There was no difference? [23]

A. I couldn't see a difference.

Q. And you purchased this trailer, Mrs. Nelson, May 17, 1956, was there—explain to the Court any changes that might have occurred in the trailer from the date of such purchase until June 12, 1956, was there any change in the trailer?

A. Why, yes, it burned up.

Q. June 12, when the insurance was issued?

A. No.

(Testimony of Beatrice Nelson.)

Mr. Johnson: That is all of the questions we have of this witness.

Cross-Examination

By Mr. Martin:

Q. Mrs. Nelson, where were you living in May of 1956? A. On the trailer court.

Q. Pardon? A. In the trailer court.

Q. Prior to the purchase of this trailer?

A. Yes, sir.

Q. Where in the trailer court, were you living in a trailer?

A. Well, I don't know whether you'd call it a trailer or not; it was—it had been a cook shack on a farm. I moved it in there for a residence. [24]

Q. Had you been shopping for trailer houses, prior to May of 1956?

A. Yes, I had looked at some.

Q. And that had been for a period of approximately six months, had it not?

A. Oh, I had been looking at them for longer than that.

Q. For the purpose of buying a trailer house?

A. Hoping I could find one.

Q. You were over near Pocatello on numerous occasions looking at trailer houses, were you not?

A. Well, I think two, to be exact.

Q. Pardon? A. Two, to be exact.

Q. You knew the value of trailer houses, did you not? A. I did.

Q. When you examined that trailer house, you

(Testimony of Beatrice Nelson.)

knew that trailer house had an approximate value of about \$6,000 retail, did you not?

A. No, I figured about five, compared to the ones I had looked at.

Q. Pardon?

A. About five in comparision to the ones I had looked at. [25]

Q. Mrs. Nelson, you are being handed your deposition, taken at two o'clock p.m., on May 2nd, 1957, you have that in your hands?

A. I imagine that's it.

Q. I direct your attention to page 10 of your deposition, will you please turn to that page. The next to the last question at the bottom of that page, you were asked: "Did you know that the trailer house had a market value of \$6,000?" What was your answer?

A. What question?

Q. Next to the bottom of the page, the fifth line up. Do you see where I am reading, are you on page 10, Mrs. Nelson?

A. Yes, sir. What question?

Q. From the bottom of the page, go up to the second "Q," standing for "question."

A. Do you want me to read that question to you?

Q. That is the question, and I quote, "Did you know that trailer house had a market value of \$6,000?" What was your answer?

A. That isn't what's written here. The question here is, "Date of the certificate issued in compliance of the Motor Vehicle statute of the State of Texas.

(Testimony of Beatrice Nelson.)

The Court: You may approach the witness and show her the question. [26]

Mr. Martin: If the Court please, we have the wrong deposition. I want the deposition of the Plaintiff, Mr. Clerk.

Q. (By Mr. Martin): You now have your own deposition, is that correct? Now, do you see the second "Q" up from the bottom of the page?

A. Yes.

Q. And I quote, "Do you know that trailer house had a market value of \$6,000?" Do you see that question?

A. Yes, sir.

Q. And your answer was what?

A. "No, sir."

Q. And the next question, "Did you know that it had a market value of approximately \$6,000?" Please turn to page 11, what was your answer?

A. "No."

Q. The next question, "Well, Mrs. Nelson, what is your best estimate as to the market value of that trailer house?" Will you please read your answer?

A. "I imagine that it would have cost that much had I gotten it at a trailer court, but they had a Bill of Sale," I can read what's here but I don't remember saying it.

Q. Go ahead, please. [27]

A. "I imagine that it would have cost that much had I gotten it at a trailer court, but they had a Bill of Sale—no—it wasn't a Bill of Sale,

(Testimony of Beatrice Nelson.)

they had a paper that they were to deliver it for four-thousand at Boise.”

Q. Thank you. Now, as a matter of fact you knew that the retail value of that trailer was approximately six-thousand, did you not?

A. I said I figured about five-thousand, in estimate of the ones I had been looking at.

Q. Well, then, what you are saying now is not in accord with what you stated in your deposition, is it?

A. That deposition says that I didn't know that it was valued at six-thousand—those places here.

Q. Mrs. Nelson, had you ever seen these men before? A. No, sir.

Q. Have you ever seen them since the 17th day of May, 1956? A. No, sir.

Q. Would you hand the witness Plaintiff's Exhibit No. 6, please? Mrs. Nelson, you state that that is the paper given to you by the two men?

A. Yes, sir.

Q. I direct your attention to the total price of that trailer house, \$4,276.70, is that correct as shown by the exhibit? [28] A. Yes, sir.

Q. And you paid these men \$2,000 for that trailer house? A. Yes, sir.

Q. Now, directing your attention to the bottom left hand portion of that exhibit, you see some printing there? A. Yes, sir.

Q. There are three distinct portions there, are there not? Three separate paragraphs?

A. Yes, sir.

(Testimony of Beatrice Nelson.)

Q. Will you please read, for the record, the middle paragraph?

A. "In event of payment by check, other than a cashier's check, or certified check, it is expressly understood that title shall remain with seller until such check is honored."

Q. You did not make your check payable to the Supreme Trailer Company, did you?

A. No, sir.

Q. What authority or authorization did these men say that they had to sell that trailer house?

A. They told the lawyer that they were in authority to act for the company.

Q. They told the lawyer that? [29]

A. Yes, sir, they had the right to sell it.

Q. Did Mr. Loofborrow examine their credentials or papers? A. Yes, sir.

Q. He did? A. Yes, sir.

Q. Do you remember going to Mr. Loofborrow's office with Mr. Smith and Mr. Peterson about, approximately, I will say the 18th of October, 1956?

A. Yes, sir.

Q. Do you recall telling Mr. Peterson and Mr. Smith, just prior to that, to going there, and that same day that Mr. Loofborrow had examined the credentials and papers of these men?

A. Well, I don't recall it. I don't recall them asking me, but——

Q. I will ask you whether or not you recall Mr. Smith, Mr. Stan Smith, asking Mr. Loofborrow

(Testimony of Beatrice Nelson.)

whether he had examined any papers or credentials of either of these men?

A. Well, I can't recall whether he did or not—he was in the office—I don't recall whether he asked him that question.

Q. I will ask you whether or not you recall Mr. Loofborrow told Mr. Smith and Mr. Peterson expressly that he [30] examined no papers or credentials whatever?

A. No, sir, I don't remember him saying that.

Q. Would you state that that could happen?

A. No, because I think we had specified that and I knew it would have been wrong because he did examine them.

Q. What was the reason that you were given for the sale of this trailer house at \$2,000?

A. That these men gave me?

Q. Yes.

A. Well, they said they had damaged it and they would sell it at a bargain rather than take it into Boise and it would be rejected and they would have to take it back to Texas and they would sell it at that price rather than trail it clear back to Texas.

Q. Was the trailer house damaged?

A. Yes, sir.

Mr. Martin: Mr. Clerk, may I have these marked as Defendant's Exhibits?

The Clerk: Marked as Defendant's Exhibits Nos. 8, 9, and 10 for identification.

(Testimony of Beatrice Nelson.)

(The documents referred to were marked Defendant's Exhibits Nos. 8, 9, and 10 for identification.) [31]

Q. (By Mr. Martin): Now, Mrs. Nelson, I believe you stated that there had been no change or improvements made to the trailer house between the time you purchased it on May 17, 1956, and the time this policy, or the time that Mr. Peterson consulted you on June 12, or approximately, 1956, is that correct? A. That's right.

Q. So the damage that was caused to this trailer house was the same in June of 1956 as it was in May? A. Yes, sir.

Q. Were there any further improvements made on that trailer house between June of 1956 and the last time you ever saw the trailer house?

A. No, sir.

Q. That fire that occurred, did that cause any exterior damage to the trailer house?

A. No, sir.

Q. You have been handed Defendant's Exhibits 8, 9, and 10, marked for identification. Now, will you please look at Exhibit 8—look at the back——

A. That is No. 8.

Q. Does that picture correctly represent the condition of that trailer house with respect to the exterior damage that existed in May of 1956? [32]

A. Yes, sir.

Q. Will you please look at Exhibit 9, does that

(Testimony of Beatrice Nelson.)

picture correctly represent the exterior damage to that trailer house as it existed in May of 1956?

A. Yes, sir.

Q. Will you look at Exhibit 10, does that picture correctly represent the damage to the exterior of the trailer house as it existed in May of 1956?

A. Yes, sir.

Mr. Martin: We offer the Exhibits in evidence, your Honor.

Mr. Johnson: No objections, your Honor.

The Court: Exhibits 8, 9, and 10 may be admitted.

(The documents referred to were marked Defendant's Exhibits Nos. 8, 9, and 10 and were received in evidence.)

Q. (By Mr. Martin): Mrs. Nelson, did these men deliver to you a Certificate of Title to the trailer house? A. No, sir.

Q. Did you ever make an application by letter, telephone, or any other manner to the Supreme Trailer Company or to the Mobile Homes at Bonham, Texas, for a Certificate of Title, a Bill of Sale, or a Statement of Origin, or anything else to that trailer house? A. No, sir. [33]

Q. The only thing that you relied upon was that the men said that they had the authority to sell it? A. I had my Bill of Sale.

Q. Yes, and that is all you had—

A. At that time.

Q. —you had their statement that they had

(Testimony of Beatrice Nelson.)

the authority to see it? A. Yes, sir.

Q. Which one of those men told you they had the authority to sell it, Mrs. Nelson?

A. Mr. Roberts.

Q. Now, what did Mr. Roberts look like?

A. I don't think I can answer that. I think I saw them for about forty-five minutes or fifty minutes that day was as long as I saw them. I don't recall what they looked like.

Q. Mrs. Nelson, you stated that you told Mr. Peterson you did not have \$6,000 in the trailer house but that it was worth \$6,000, is that correct?

A. No, I don't recall specifying the amount.

Q. Did you ever tell him that you paid \$2,000 for it when he came over to talk to you about insuring it? A. Yes, sir.

Q. You did tell him you paid——

A. That is the way I recall it, I did. [34]

Q. You are certain of that?

A. I think I am.

Q. Did you discuss with Mr. Roberts or Mr. Pauls a Certificate of Title? A. No, sir.

Q. Now, isn't it a fact that you, in your deposition, you stated they told you that they would send you a Certificate of Title?

A. They told Mr. Loofborrow that they would.

Q. Do you recall a conversation with Mr. Smith and Mr. Peterson, that I believe took place in American Falls on or about October the 18th, 1956, in which you stated to Mr. Smith and Mr. Peterson that these men told you they did not have

(Testimony of Beatrice Nelson.)

a Certificate of Title with them but they would send you one? A. No, I don't recall it.

Q. Would you state that you did not tell them that?

A. No, I wouldn't state that I didn't, but I don't recall it right now.

Q. I think you testified a few minutes ago that they told Mr. Loofborrow they would send a Certificate of Title? A. Yes.

Q. Did they say where from? A. No. [35]

Q. Did they give you any address where you could get in touch with them? A. No, sir.

Q. Was this a brand-new trailer house?

A. Well, they had been sleeping in it.

Q. Well, as between a new and a used trailer house, what was it?

A. I can't say whether it was or not, they said it was a new one.

Q. You saw the invoice, that they were delivering it to the Aetna Trailer Sales in Boise, Idaho?

A. Yes, sir.

Q. Is there any question in your mind that was a new trailer house? A. No, sir.

Q. It was, and you know it, don't you?

A. There is no question. It was just like I say, they had been sleeping in it, there was cigarette burns on the wash stand where they had laid the cigarettes. They said they had been sleeping in it on the trip up.

Q. Mrs. Nelson, was an action brought against

(Testimony of Beatrice Nelson.)

you to repossess that trailer house on behalf of the Supreme Trailer Company or its fidelity company?

A. Was what?

Q. Was an action brought against you to repossess [36] that trailer house on behalf of the Supreme Trailer Company or its fidelity company by reason of the fact that that trailer house had been embezzled or stolen by those men?

A. Well——

Mr. Johnson: We object to the question, your Honor, that the action, if any, would be the best evidence, would be the official court files, if there is any.

The Court: She may answer that "Yes or no," whether an action was brought to recover the trailer. You may answer it, "yes or no."

The Witness: Yes.

Q. (By Mr. Martin): An action was brought to recover that trailer house? A. Yes.

Q. Where is that trailer house?

A. I don't know.

Q. Do you now know that those men had no authority to sell that trailer house, now?

A. No, I don't know it.

Q. Were you successful in that action that was brought against you to recover that trailer house?

Mr. Johnson: Again, we object to the question, the files of the court would be the best evidence.

The Court: She can answer that. She knows whether [37] she was successful or not. You may answer it, "yes or no."

(Testimony of Beatrice Nelson.)

The Witness: I don't think I understand what you mean, will you clarify it just a little?

Q. (By Mr. Martin): Pardon?

A. Would you clarify it, I just don't understand what you mean by that.

Q. Did you defend that action, Mrs. Nelson?

A. I don't know.

Q. You don't know whether you did or not?

A. I don't know, my lawyer handled it—he does all that for me—I don't know what the answer is to that.

Mr. Johnson: I would be glad to refresh her memory.

Mr. Martin: That is all.

Redirect Examination

By Mr. Johnson:

Q. Might we have Plaintiff's Exhibits 6 and 7, please? Mrs. Nelson, looking at Plaintiff's Exhibit 6, in the right hand corner, do the words, "C.O.D." appear on that Exhibit? A. Yes, sir.

Q. And was there any explanation given you by Pauls and Roberts regarding the delivery of this trailer and the terms of the delivery? [38]

A. Yes, sir.

Q. What was that?

A. They were to deliver it C.O.D. to the trailer court in Boise.

Q. In other words, to receive cash on delivery?

A. That's right.

(Testimony of Beatrice Nelson.)

Q. Regarding the check that you gave them for \$2,000, you will notice in the lower left hand corner, Mr. Martin asked you about a paragraph, the second paragraph, did Mr. Pauls and Mr. Roberts insist that they receive cash—in other words cash the check in American Falls?

A. Yes, sir.

Q. You mentioned on cross-examination that a Certificate of Title was not issued to you at that time, at any time was a Certificate of Title issued to you? A. Yes, sir.

Mr. Martin: We move to strike that answer for the purpose of an objection.

The Court: It may be stricken, for the purpose of an objection.

Mr. Martin: Did you have a Certificate of Title at any time between May 17, 1956, and the date of the loss, or the date of this fire?

The Witness: No, sir.

Mr. Martin: You did not. We object that [39] the question is incompetent, irrelevant, and immaterial.

The Court: Objection sustained, unless and except the Certificate of Title was received from the owner.

Mr. Martin: Pardon, your Honor.

The Court: I don't know, Mr. Martin, whether they are going to show—I will let them identify the Certificate of Title. I don't know whether it was issued from the owner or from whom. If you are attempting to introduce a Certificate of Title issued

(Testimony of Beatrice Nelson.)

by the State of Idaho based on that Bill of Sale, subsequent to the fire, the ruling to the objection will still stand.

Q. (By Mr. Johnson): Did you apply any time from May 17, 1956, until the date of the fire for a Certificate of Title? A. No, sir.

Mr. Johnson: That is all the questions we have.

Mr. Martin: No recross.

The Court: That is all, Mrs. Nelson.

(The witness left the stand.)

The Court: We will recess for ten minutes.

(The Court was in recess for ten minutes.)

The Court: You may call your next witness.

Mr. Johnson: At this time might we note a correction in the record. When we asked the Court for the request for [40] the admissions of the plaintiff, we said June of 1957, and the examination of the record indicates that they were filed August 14, 1957, and the answers thereto were filed August 20, 1957. If counsel will so stipulate, we ask that the mistake be corrected and that the actual request for admissions to plaintiff be admitted in evidence on the date that they were filed.

Mr. Martin: I think that that is correct, your Honor.

The Court: Very well, the correction may be made.

Mr. Johnson: At this time the plaintiff will call Mr. Thom Fritcher.

JAMES T. FRITCHER

a witness called on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please, for the record.

The Witness: James T. Fritcher.

Direct Examination

By Mr. Johnson:

Q. Mr. Fritcher, where do you reside?

A. 238 Washington, Alameda.

Q. How long have you so resided there?

A. Pardon?

Q. How long have you so resided there? [41]

A. At 238 Washington, approximately six months.

Q. And where did you reside before that?

A. At 528 Yellowstone in Alameda.

Q. And how long did you so reside there?

A. Two-and-a-half years.

Q. During the year 1956, what was your business or occupation?

A. I was a service salesman for Eastern Idaho Trailer Sales.

Q. And in such capacity, exactly what did your duties consist of?

(Testimony of James T. Fritcher.)

A. It consisted of servicing—service management—and selling of trailer houses.

Q. Did you have a superior in such position?

A. I did.

Q. And how did you fall in the position exactly, were you in an assistant position or what?

A. I was his assistant.

Q. And how long have you worked around trailer houses?

A. I worked two-and-a-half years for Eastern Idaho Trailer Sales, and before, while in the Navy since 1953, I work part time, on the weekends and leaves that I had around trailers.

Q. And for the two-and-a-half years you worked at [42] Eastern Idaho Trailer Sales were you engaged in the selling of trailers? A. I was.

Q. Did you have occasion to examine trailer number—Supreme Trailer House, serial number 6955, during the year of '56? A. I did.

Q. About when did you examine that trailer?

A. I believe it was in the month of December, around the twentieth, I think.

Q. And did you make a complete inspection of it at that time?

A. I went through the trailer, looking at the fire damage that had occurred in the trailer.

Q. At that time did you form an opinion as to what the full market value of that trailer would be in its condition that it was then in?

A. I did.

Q. And what is that figure?

(Testimony of James T. Fritcher.)

Mr. Martin: Just a minute, to which we object as being irrelevant and immaterial.

The Court: He may answer. That is after the fire, is it not?

Mr. Johnson: Yes, your Honor, December of '56. [43]

Q. (By Mr. Johnson): What would be your opinion? A. Around \$900.

Q. Could you distinguish between fire damage—assuming that that trailer had not been damaged fire, and that it was in a condition where the fire damage was not there, and it was in a condition that it would be had there been no fire damage, do you have an opinion as to what the reasonable market value would have been on September 23, 1956—or in this vicinity?

A. Around \$6,000.

Q. I see. And assuming that the fire damage had occurred and the trailer was as you saw it in December, and you saw that trailer on September 23, 1956, do you have an opinion as to what the market value would have been then?

A. If that was before the fire damage, it would——

Q. After the fire?

A. After the fire damage, around \$900.

Mr. Johnson: That is all.

Mr. Martin: No questions.

The Court: That is all, sir.

(The witness left the stand.)

The Court: I don't know how much evidence you have as to the damages here, Mr. Johnson, is it not possible for [44] counsel to agree that if the Plaintiff is entitled to recover that the damage to the trailer would be a certain amount of money or the difference in value?

Mr. Martin: I think we could, your Honor.

(Off the record discussion by counsel.)

The Reporter: May I have the stipulation, please?

Mr. Johnson: The stipulation being: it is stipulated by and between counsel that the value of Supreme Trailer Home, Number 6955, being the subject trailer home of this litigation, had a value immediately preceeding the fire on September 23, 1956, of \$5,895.00 and immediately after the fire which occurred September 23, 1956, the trailer had a value—a full fair market value of \$1,267.50, upon such September 23, 1956. Is it so stipulated, counsel?

Mr. Martin: It may be so stipulated.

Mr. Johnson: At this time we would like to call Mr. Dan Bates. Could Mr. Fritcher be excused?

The Court: As far as the Court is concerned, he may.

Mr. Martin: No objection, your Honor.

The Court: Mr. Fritcher may be excused. [45]

DANIEL H. BATES

a witness called on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Dan H. Bates.

Direct Examination

By Mr. Johnson:

Q. Would you state your full name, please?

A. Daniel Hiram Bates, signed as Dan H. Bates.

Q. Where do you reside, Mr. Bates?

A. 3409 Poleline Road, Pocatello.

Q. And how long have you so resided there?

A. About seven months.

Q. And where did you reside before that?

A. American Falls, Idaho.

Q. And how long did you reside there?

A. Approximately two years.

Q. Taking your memory back to May 17, 1956, or thereabouts, will you state to the Court if you met a Joseph Roberts and Albert Pauls?

A. Yes, sir.

Q. And would you state to the Court where you met them?

A. I had a place of business half a mile east of American Falls. They were in the cafe there for breakfast [46] one morning in May. They had a trailer-tractor was what they were driving. After breakfast—I had just purchased a trailer house

(Testimony of Daniel H. Bates.)

for myself—they asked me if I wanted to buy another one.

Mr. Martin: Your Honor, we object to this testimony that it is hearsay as far as the defendant is concerned, not binding on the defendant, and irrelevant and immaterial.

The Court: The objection will be sustained as to any conversation that he had with these men.

Q. (By Mr. Johnson): Did you introduce these people to Beatrice Nelson? A. Yes.

Q. Where did that introduction take place?

A. At the Paradise Lounge.

Q. Were you present during any discussion between the plaintiff and these two persons?

A. Yes, sir.

Q. Were you present at any time when there was a discussion with Lawyer Loofborrow?

A. Yes, sir.

Mr. Johnson: We have no further questions, your Honor.

Mr. Martin: Mr. Bailiff, will you please take the deposition of the plaintiff, Beatrice Nelson, and hand it [47] to this witness.

Cross-Examination

By Mr. Martin:

Q. Mr. Bates, you stated that you had just bought a trailer house yourself? A. Yes, sir.

Q. You were not interested in any other trailer house then, were you?

A. Yes, sir, I was. I wanted to get a bigger one.

(Testimony of Daniel H. Bates.)

Mr. Martin: No further questions.

Mr. Johnson: Excuse me, what was that last answer?

The Witness: I wanted to get a bigger trailer.

Mr. Johnson: What was the last question?

Mr. Martin: I asked him if he were interested in any other trailer house himself. No further questions.

Mr. Johnson: We have no further questions.

The Court: That is all, sir.

(The witness left the stand.)

The Court: Call your next witness.

Mr. Johnson: Your Honor, the Plaintiff rests.

The Court: Very well.

Mr. Martin: At this time the defendant offers in evidence the deposition of **Robert D. Franks** and **Leonard Riley** which has already been published.

The Court: Are you going to read that into the [48] record, Mr. Martin?

Mr. Martin: No, your Honor, in order to save time, I can either read it into the record, or I would prefer that it be considered read and let the Court examine it at the Court's convenience.

The Court: It would have to be stipulated, Mr. Martin, otherwise there might be some objections to questions. If counsel wants to stipulate that it be introduced and considered read into the record, it may be done.

Mr. Johnson: We have never seen a copy, your

Honor, for that reason we cannot so stipulate, at the present time. If it could be read we could object to the questions as they are asked and answered.

Mr. Martin: I don't think we are going to finish this morning so I can let counsel examine this during the noon recess in order to save time.

The Court: Very well.

Mr. Martin: Mr. Stan Smith, please.

STANLEY SMITH

a witness called on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Stanley Smith. [49]

Direct Examination

By Mr. Martin:

Q. Please state your full name for the Court and the Reporter? A. Stanley S. Smith.

Q. Your place of residence?

A. Hawthorne Road, Pocatello, Idaho.

Q. How long have you resided here, Mr. Smith?

A. Approximately three years.

Q. Your business?

A. Insurance claims adjuster.

Q. By whom are you employed or for whom do you work?

A. General Adjustment Bureau.

Q. Is that a corporation?

(Testimony of Stanley Smith.)

A. That is correct.

Q. What is your capacity with your employer?

A. I'm the Pocatello branch manager.

Q. Mr. Smith, do you recall whether or not you and Dean Peterson went to American Falls on or about October 18, 1956, and had a conversation with the plaintiff, Beatrice Nelson?

A. Yes, I recall it.

Q. Where did this conversation take place?

A. Well, we had several conversations. The first [50] one was in her new acquired Angelus Trailer Home.

Q. Now, directing your attention, particularly to a Certificate of Title, do you recall whether or not there was any conversation with respect to the Certificate of Title between you and Mr. Peterson and the plaintiff, Beatrice Nelson?

A. Yes, I recall it.

Q. Will you please relate to the Court in substance and effect that conversation?

A. Well, Mr. Peterson sort of carried the ball of that part of the conversation; as I recall he said, "Now, Bea, what kind of papers do you have to show your ownership of the trailer?" She remarked that she had a Bill of Sale that was given to her, and I don't just recall what was said by either Peterson or myself, but I do recall that she told us that she had been promised a Certificate of Title that was to be sent to her, I presume by mail. Apparently she had never received it.

Q. By whom?

(Testimony of Stanley Smith.)

A. By the two men that had given her the Bill of Sale—or the one man.

Q. Do you recall whether or not she stated that they had told her that?

A. Yes, that is right, they told her they would send her a Bill of Sale—excuse me, a Certificate of Title. [51]

Q. Do you know whether or not she had a Certificate of Title to that trailer house at that time?

A. I know that she said that she did not have any.

Q. Now, was there any conversation relative to the time she went to Mr. Loofborrow's office in May of 1956, relative to the drawing up of this Bill of Sale?

A. I'm sorry, I didn't get the question.

Mr. Martin: Mr. Reporter, will you read the question, please?

(The Reporter read the question as follows:

“Question: Now, was there any conversation relative to the time she went to Mr. Loofborrow's office in May of 1956, relative to the drawing up of this Bill of Sale?”

A. Oh, yes, yes. She told us that she had gone.

Q. (By Mr. Martin): Will you please tell the Court what the substance of that conversation was with respect to Mr. Loofborrow having examined any instruments?

A. Well, she said that Mr. Loofborrow was her lawyer and that they had gone down there to his

(Testimony of Stanley Smith.)

office and that Mr. Loofborrow had either checked or examined the credentials or papers which these men showed Mr. Loofborrow, so that he could pass on whether or not they had the right to sell the trailer. That would be the substance of it.

Q. Did you and the plaintiff, Beatrice Nelson, and [52] Mr. Peterson, that same day then go to Mr. Loofborrow's office? A. Yes.

Q. Did you have a conversation with Mr. Loofborrow in the presence of the plaintiff, Beatrice Nelson, and Mr. Dean Peterson? A. Yes.

Q. Directing your attention to—or relative to the examination of any papers, did you ask Mr. Loofborrow whether he had made such an examination? A. I certainly did.

Q. Please tell the Court the substance and effect of that conversation.

A. Well, I did ask Mr. Loofborrow if he had checked any papers—frankly I didn't know what the papers were—they were just referred as papers—that these two men showed him so that he would know that it could be a proper sale. And Mr. Loofborrow very emphatically told me that he had not checked any papers, that he had only been asked to draw up a Bill of Sale, and that was all that they asked of him and that is all that he did. He then commented that a Bill of Sale was not any better than the person who would give a Bill of Sale. He turned around and he asked Mrs. Nelson, "Did you know those two men?" She said, "No," she didn't. I don't recall any par-

(Testimony of Stanley Smith.)

ticular [53] conversation thereafter. There was kind of a silence, it seemed like, and we left.

Q. Now, Mr. Smith, as the Manager of the General Adjustment Bureau, here in Pocatello, tell the Court whether or not you have received in your normal course of business, in representing insurance companies, notification that this trailer house had been stolen and for you to try to find it?

A. Well, I received a memorandum from our Boise Office advising me to——

Mr. Johnson: We object to what the memorandum advised. If he has it in his possession it would be the best evidence.

Q. (By Mr. Martin): Do you have the memorandum in your possession? A. Yes, I do.

Q. May we have it, please?

(The witness left the stand to get the document in question and returned to the witness stand.)

Mr. Martin: Mr. Bailiff, will you please have the Clerk mark those two instruments?

The Clerk: Marked as Defendant's Exhibits Nos. 11 and 12 for identification.

(The documents referred to were marked Defendant's Exhibits Nos. 11 and 12 for identification.) [54]

Mr. Martin: Will you hand those to the witness?

(The documents were handed to the witness.)

(Testimony of Stanley Smith.)

Q. (By Mr. Martin): Handing you what has been marked Defendant's Exhibit No. 11 for identification, can you identify that instrument?

A. Yes.

Q. What is that?

A. It's an inter-office memorandum from our Boise Branch Office to the Pocatello Branch Office.

Q. Is that the memorandum which you just started to testify about? A. That is correct.

Mr. Martin: We offer that in evidence, your Honor.

Mr. Johnson: May we examine it, please?

The Court: Any objection?

Mr. Johnson: There was an enclosure with the letter that it states here.

Mr. Martin: It was part of the correspondence.

Mr. Johnson: We have no objection, your Honor.

The Court: There is nothing in the record to show what was attached to this exhibit.

Mr. Martin: A photostatic copy of a telegram sent by Joseph Roberts to the Supreme Trailer Company in Bonham, Texas. [55]

The Court: Very well, if there is no objection Exhibit No. 11 may be admitted.

(The document referred to was marked Defendant's Exhibit No. 11 and was received in evidence.)

Q. (By Mr. Martin): Now, Mr. Smith, is that

(Testimony of Stanley Smith.)

the memorandum which you referred to—which you received with reference to the trailer house which is the subject matter of this law suit, having been stolen?

A. Well, when I received it I didn't know that it referred to the trailer. I just knew that it referred to a trailer.

Q. Did you, upon examination of the memorandum, and then upon receiving this claim of fire damage tie up with the memorandum and this trailer house?

A. Well, I had had a fire damage file for quite some time in my desk.

Q. But, did you tie up the two of them?

A. That is correct.

Q. Pardon? A. Yes.

Q. Can you tell the Court whether or not you determined that the trailer house which is the subject matter of this law suit is the same trailer house that is reported stolen to you, as set forth in Defendant's Exhibit [56] No. 11?

A. Well, the descriptions were identical, including serial numbers.

Q. Did you determine that it was that trailer house? A. Yes.

Q. Now, will you please take Defendant's Exhibit 12, what is that exhibit, can you identify it?

A. It's a warrant of arrest, State of Texas vs. Joseph Roberts.

Q. And did you receive that in your usual and normal course of business with reference to the memorandum on the stolen trailer house?

(Testimony of Stanley Smith.)

A. Well, it came from our Boise Branch Office. I don't recall now what it came with.

Mr. Martin: We offer Defendant's Exhibit 12 in evidence.

Mr. Johnson: To which offer of the exhibit we object on the ground it is immaterial to this law suit; that it is not the best evidence; that the witness is not competent to verify anything to do with the exhibit; and it is irrelevant and it is pure hearsay; there is no foundation laid whatsoever for the admission of this exhibit.

The Court: What is the purpose of this, Mr. Martin?

Mr. Martin: The purpose of that, your Honor, is to [57] show the embezzlement of this trailer house by the——

The Court: You cannot show embezzlement by a warrant of arrest, or——

Mr. Martin: I am sorry—the unlawful act, or alleged unlawful act, by the true owner of this trailer house of Mr. Paul and Mr. Roberts.

The Court: The mere issuing of a warrant of arrest does not necessarily mean that a man has committed a crime.

Mr. Martin: That is true, your Honor, we are not trying to——

The Court: If it is something that has to do with notice to this man, that might have a bearing on what he did later, that might be alright, but as proving that the trailer house was stolen or that

(Testimony of Stanley Smith.)

this man was guilty of embezzlement it is immaterial.

Q. (By Mr. Martin): Mr. Smith, did you make inquiry by reason of Defendant's Exhibits 11 and 12, to try to ascertain the whereabouts of Joseph Roberts?

Mr. Johnson: To which question we object on the grounds that any inquiry is a trespass on the plaintiff.

The Court: He may answer that question, "yes or no."

The Witness: No. [58]

Q. (By Mr. Martin): Do you know where Joseph Roberts is? A. No.

Q. Do you know whether or not he has ever been heard of by anybody since the sale of this trailer house to the plaintiff?

A. I wouldn't know.

The Court: If there is no other purpose for which this Exhibit is being offered, Mr. Martin, I will have to sustain the objection.

Mr. Martin: Very well, your Honor. That is all.

Cross-Examination

By Mr. Johnson:

Q. Mr. Smith, you stated that your first conversation with Bea Nelson—Beatrice Nelson—was in her Angelus Trailer Home, is that correct?

A. Well, my first conversation on that particular day.

(Testimony of Stanley Smith.)

Q. I see. Had you ever met her prior to that time? A. Yes.

Q. When was that?

A. It was on the date of the fire, September 23, 1956.

Q. And did you go to the site of the fire itself?

A. Yes. [59]

Q. Were you with any other person?

A. Yes.

Q. Who was that person?

A. Mr. Dean Peterson.

Q. Can you remember any of the conversation that took place at that time with the plaintiff and yourself?

A. I recall that we had a conversation.

Q. Do you recall anything that was said?

A. Well, in essence, I no doubt would recall it.

Q. Would you state to the Court what the essence of that was?

A. Well, I recall that she mentioned that she was not in the trailer at the time of the fire but she was out on the farm. I believe I asked her if she had any knowledge as to the origin of the fire and I don't believe that she knew the exact cause. The conversation, as I remember, pertained strictly to the circumstances of the origin and the particular damage as we observed it throughout the trailer. I don't—

Q. Was there any—did you subsequently examine or investigate into the origin of the fire?

A. In a limited manner.

(Testimony of Stanley Smith.)

Q. Was there anything about the origin that might have been untoward, in the sense that there was a moral risk involved. [60]

Mr. Martin: Just a minute, counsel. We object to that question as being incompetent, irrelevant and immaterial, and has no bearing on the issues, and is certainly not within the issues.

The Court: Objection sustained. It is not being contended that she set the trailer house on fire.

Q. (By Mr. Johnson): About what date was this that you—was that the date of the fire, September 23, is that correct?

A. Well, I recall Dean called me up on a Sunday, and we went over in my car on a Sunday. I would say it was about September 23, it could have been September 23.

Q. Examining Exhibit 11, would you state to the Court about when that was received in your office?

A. Well, we have date stamped it in our office as October 18, which is probably about the date we received it.

Q. After you received that, how long was it before you had—I forget the words Mr. Martin used—connected up the trailer there as being the trailer in American Falls?

A. About two minutes.

Q. And after that two minute interval, who did you notify, if any one?

A. Dean Peterson.

Q. Who else?

A. Well, in what interval of time? [61]

(Testimony of Stanley Smith.)

Q. In the next several weeks?

A. I notified our Boise Branch Office that it seemed that we had located a trailer that they had described.

Q. Yes. What was your—you state the morning that the fire occurred, Dean Peterson contacted you, is that right?

A. Well, it was sometime during the day, I don't recall whether it was morning or after lunch, but it was that day.

Q. And that was for the purpose of the general adjustment of possible claims?

A. Well, it was for the purpose of inspecting the fire loss.

Q. For whom? By whom were you employed?

A. Dean Peterson asked me to go with him and inspect the fire loss for one of his insureds. I didn't frankly know at that time anything about the coverage information, if that is what you are referring to.

Q. And did you subsequently know for which insured that——

A. Oh, yes, we get policy information.

Q. And did the plaintiff, Beatrice Nelson, submit to you a proof of loss.

A. Well, I believe there was one submitted.

The Clerk: Marked as Plaintiff's Exhibit No. 13 [62] for identification.

(The document referred to was marked Plaintiff's Exhibit No. 13 for identification.)

(Testimony of Stanley Smith.)

Q. (By Mr. Johnson): I hand you Plaintiff's Exhibit No. 13 for identification, and ask you if that is your signature that appears thereon?

A. I didn't sign it, if that is what you mean.

Q. Did that letter come from your office?

A. Oh, yes.

Q. Looking at the contents, was there a supplemental sworn statement, Proof of Loss, submitted to you by the plaintiff, Beatrice Nelson?

Mr. Martin: If it please the Court, I am going to object to that. We have stipulated, and there is in evidence the original Proof of Loss and the Supplemental Proof of Loss.

The Court: He may answer that question, whether it was submitted to him.

The Witness: Well, for what it's worth, my secretary signed my name on this particular letter, I probably dictated it, it looks like something that I did.

Q. (By Mr. Johnson): Do you remember, from your recollection, whether there was an amended Proof of Loss submitted to you? [63]

A. I would say, yes.

Q. Do you remember what you did with that Proof of Loss, if anything?

A. Probably submitted it to the insurance company that was involved.

Q. Would that amended Proof of Loss be received by you prior to the date of that letter?

(Testimony of Stanley Smith.)

A. Well, on or before, I presume.

Q. Would you have dictated such a letter if you had not received such a Proof of Loss?

A. Not knowingly.

Q. You would do it, maybe unknowingly?

A. That would be the only way, the only way I would do it.

Q. I want to establish in my mind from you, do you do things unknowingly? Would that have been done in your office?

A. If I did them unknowingly, I couldn't tell you, could I?

Q. No, that is true. Do you remember seeing that letter or copies of that letter?

A. I may not have seen it, in view that I didn't sign it, I might have dictated the letter but I very likely didn't see it.

Q. Do give your secretary permission to sign your [64] name?

A. In a limited degree, that is correct.

Q. Could she sign a letter such as this?

A. I beg your pardon.

Q. Could she sign a letter such as this?

A. Oh, she could, sure.

Q. Do you know her signature when you see it?

A. It sounds silly but I have two girls and I don't know one from the other, I have never paid that much attention to it.

Mr. Johnson: We have no further questions.

The Court: Do you have any further questions?

Mr. Martin?

Mr. Martin: No, your Honor.

The Court: That is all, sir.

(The witness left the stand.)

The Court: We will recess until 1:30 this afternoon. Counsel has not had an opportunity to examine that deposition so we will recess until 1:30.

(The Court recessed at 12:00 o'clock noon.) [65]

November 23, 1957—1:30 P.M.

The Court: Call your next witness.

Mr. Martin: Mr. Peterson, please.

H. DEAN PETERSON

a witness previously produced, sworn, and having testified in this matter, was recalled to the stand for further examination on behalf of the Defendant, and testified as follows:

Direct Examination

By Mr. Martin:

Q. Mr. Peterson, you went over to American Falls with—first, let me ask you this—some time in June, and the date has not been established, do you know when you went over to American Falls and contacted the Plaintiff with reference to this trailer house?

A. In what regard to the trailer house?

(Testimony of H. Dean Peterson.)

Q. The first time you contacted her, do you recall about when that was?

A. I contacted her some time, I believe, in June.

Q. Of 1956? A. Of 1956.

Q. Now, were you present in court all of this morning? [66] A. Yes.

Q. Now, did you hear the plaintiff testify that she told you, when you first contacted her with reference to insuring this trailer house, that she paid \$2,000 for it? A. Yes.

Q. Tell the Court whether or not she did tell you that.

A. The price of the trailer house was never mentioned.

Q. She never mentioned to you that she paid \$2,000 for it?

A. Not at the time of the purchase of the insurance.

Q. When did you first know that fact?

A. On one of my trips to American Falls with Stan Smith.

Q. That was after the fire damage?

A. Yes.

Q. Now, did you hear Mr. Smith testify relative to the conversations between he and you and the plaintiff, on or about October 18, 1956, at her trailer house? A. Yes.

Q. If I asked you the same questions would your testimony be substantially the same as Mr. Smith's

(Testimony of H. Dean Peterson.)

was?

Mr. Johnson: We object to that question. He can state what conversation he had and what he [67] said.

The Court: The objection will be sustained. He should state what he heard.

Q. (By Mr. Martin): Did you hear Mrs. Nelson testify this morning that the men did not tell her that they would send her a Certificate of Title but told that to Judge Loofborrow? A. Yes.

Q. Can you state whether or not at the conversation at her trailer house, on or about October 18, 1956, she told you and Mr. Smith that the men told her they would send her a Certificate of Title?

A. Yes.

Q. Did she so state to you and Mr. Smith?

A. I believe so.

Q. Now, did you, later that day, accompany Mr. Smith and the plaintiff, Mrs. Nelson, to Judge Loofborrow's office? A. Yes.

Q. Do you recall whether or not Mr. Smith asked Judge Loofborrow whether or not he had examined any papers back in May, at the time that he prepared the Bill of Sale? A. Yes.

Q. And what was his reply to Mr. Smith as to whether or not he had examined any papers?

A. His reply was that he hadn't. [68]

Mr. Martin: That is all.

(Testimony of H. Dean Peterson.)

Cross-Examination

By Mr. Johnson:

Q. At the time of the later conversation between Judge Loofborrow, and Beatrice Nelson was present, is that correct? A. Yes.

Q. At that time did Judge Loofborrow say that he had prepared a Bill of Sale? A. Yes.

Q. On the conversation which you originally had with Beatrice Nelson, on or about May 17, 1956, excuse me, on or about June 12, 1956, that is before the policy of insurance was issued, could you state to the Court exactly what transpired in that conversation, what you said to her and what she said to you?

A. I don't know just exactly what time you are talking about.

Q. Before the policy of insurance was issued to Beatrice Nelson, June 12, 1956, you had discussed the purchase of insurance with her, is that correct?

A. Yes.

Q. At that time, during that conversation or discussion, what was said?

A. In general, the conversation was that I [69] complimented her on having a nice trailer house—and it was a nice trailer house—and through conversation it developed—and I don't recall just how, that the trailer should have a fair retail value of around \$6,000 and Mrs. Nelson told me that she didn't pay that much for it. And in the ensuing

(Testimony of H. Dean Peterson.)

conversation we attempted to arrive at what would be a normal amount of insurance to place on it, and through conversation we decided that \$5,000 was a good insurable value of the trailer.

Q. And she at no time stated to you that she paid \$5,000 for that trailer?

A. No; she did not.

Mr. Johnson: Could we have Plaintiff's Exhibit 3, I believe it is?

Q. (By Mr. Johnson): Showing you the first page of Plaintiff's Exhibit 3, in the column, "Actual Cost When Purchased, Including Equipment," that figure did not come from the plaintiff, Beatrice Nelson, is that correct?

A. No; that figure did not come from her.

Q. And the day that you discussed this with her, did you state at that time that you would write up an insurance policy and send her a bill?

A. Yes.

Q. And did you do that? [70] A. Yes.

Q. At any time during your trips to American Falls following the fire loss and investigating this particular fire loss, did you go there with Stan Smith, to American Falls?

A. I—would you repeat the question?

Q. In the investigation of this fire damage, did Stan Smith investigate with you? A. Yes.

Q. Did you look into this matter also, yourself?

A. Yes, from a standpoint.

Q. At any time were any bids secured on this trailer house?

(Testimony of H. Dean Peterson.)

A. I am not familiar with that, I presume and I believe that there was, but the mechanics of handling the adjustment, I'm not familiar with.

Q. Are you familiar with whether or not a check was received in payment of this trailer house in 1956 from an anticipated sale?

A. I believe there was.

Mr. Martin: Just a moment. I object to that question as ambiguous, a check received, who from, what for, and when.

Q. (By Mr. Johnson): Are you familiar if there was a check received [71] from Steve Rhodes, payable either to the New Hampshire Fire Insurance Company or Beatrice Nelson in payment of the salvage of this trailer?

A. I believe that there was.

Mr. Martin: Just a moment. I am going to object to that as indefinite as to time, your Honor.

The Court: He may answer it, "yes or no."

Q. (By Mr. Johnson): Regarding this check, did you make a personal trip to American Falls yourself because of this check?

A. That wasn't the only purpose of the trip.

Q. But that was one of the purposes?

A. Yes.

Q. Would you state to the Court what one of the purposes of the trip was?

Mr. Martin: Now, I am going to object to this; it is improper cross-examination, not having been brought out on direct.

The Court: Objection sustained.

(Testimony of H. Dean Peterson.)

Q. (By Mr. Johnson): On that trip did you have a conversation with Judge Loofborrow?

Mr. Martin: Same objection, your Honor.

The Court: Objection sustained.

Mr. Johnson: We have no further questions—oh, excuse— [72] might I cross-examine a bit further, your Honor?

The Court: Yes.

Mr. Johnson: At this time we would like to have a paper marked as Plaintiff's Exhibit—

The Clerk: Marked as Plaintiff's Exhibit No. 14 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 14 for identification.)

Mr. Johnson: Also, we would like to have this marked Plaintiff's Exhibit 15 for identification, being two papers stapled together.

(The document referred to was marked Plaintiff's Exhibit No. 15 for identification.)

Q. (By Mr. Johnson): Showing you Plaintiff's Exhibit 14 for identification, does your name appear on that exhibit? A. Yes.

Q. Is that purported to be an endorsement on an insurance policy? A. Yes.

Q. And what policy is that an endorsement on?

Mr. Martin: Just a minute. Your Honor, that exhibit is not in evidence; we object to the question.

(Testimony of H. Dean Peterson.)

The Court: Objection sustained. Ask him what it is. [73]

Q. (By Mr. Johnson): What—that is in two parts, that exhibit, one purporting to be an endorsement, what is the other part?

A. It's also an endorsement.

Q. Could you state to the Court, generally, what they purport to be an endorsement of?

Mr. Martin: We object to that that the exhibit is not in evidence, your Honor.

The Court: He may answer that question.

The Witness: One endorsement is changing the item insured from a '56 Supreme Trailer Home to a 1956 Angelus Trailer Home and increasing the amount of insurance from five thousand to seven thousand, and the other endorsement adds \$2,000 coverage on the personal effects in the newly acquired trailer.

Q. And what date do they purport to be written?

A. The effective date of the endorsement is December 1, 1956.

Q. From the exhibit can you see any relation to them with Exhibit 3 of the Plaintiff?

Mr. Martin: Now, we object to that in that the testimony now shows that the alleged endorsement is after the date of the loss and therefore is irrelevant and immaterial as to this subject matter.

The Court: He has not offered it yet, Mr. [74] Martin.

Mr. Martin: We object to his testimony, your Honor.

(Testimony of H. Dean Peterson.)

The Court: He may answer that, what it is a purported endorsement on.

Q. (By Mr. Johnson): Does this purport in any way to be related to Exhibit 3, being the policy in evidence?

A. Yes; it amends that policy.

Mr. Johnson: At this time, your Honor, we offer in evidence Plaintiff's Exhibit 14 for identification as Plaintiff's Exhibit 14.

Mr. Martin: To which we object on the grounds that it is incompetent, irrelevant, being subsequent to the time of the fire loss.

Mr. Johnson: We submit it is material to show the continued existence of the insurance policy which is here sued upon, the contract of insurance between the insured and the insurer, that there is no evidence that there has been a return of premium except that which is in the deposition of the plaintiff, and the Court will see was made many months after this, and, therefore, it shows that there could be in contemplation of loss, very well, a waiver of any defect regarding the insurable interest and the company knowingly, with all the knowledge at their disposal issued an endorsement on the same policy of insurance [75] for a new trailer house.

Mr. Martin: If the Court please, there is no such information in this record that this company knowingly and with all of this information available did that.

The Court: As I understand it, this endorsement,

(Testimony of H. Dean Peterson.)

is this a change of trailer from the one that the original policy was issued on?

Mr. Johnson: Yes, sir; it is on a new trailer house. It does show—it's just, whatever it might be worth—to show that, of course, behind this law suit, in the affirmative defenses, it seems to us, at least, that there is a moral risk issue, and this also shows that the policy—the company, at least with the knowledge they had at that time issued an endorsement on the exact same policy to the plaintiff in this suit. And whatever knowledge they had at that time they did this.

The Court: That would not make any difference in your right to recover if they did.

Mr. Johnson: Well——

The Court: I will admit it for what it is worth. I do not think it has any value but I will admit it.

(The document referred to was marked Plaintiff's Exhibit No. 14 and was received in evidence.)

Mr. Johnson: Preliminary to making an offer I would like to ask just one question. [76]

Q. (By Mr. Johnson): Mr. Peterson, between the time of this fire loss and December 1, or around the first of December, did you have occasion to discuss the alleged, or might have been, embezzlement of this trailer house with Mr. Stan Smith?

A. I think so, undoubtedly.

Q. And when did you first hear, if you remember, of such a possibility?

(Testimony of H. Dean Peterson.)

Mr. Martin: Objection, your Honor, improper cross-examination.

The Court: Objection sustained.

Mr. Johnson: We have no further questions, your Honor. We withdraw Exhibit No. 15.

Mr. Martin: No further questions.

(The witness left the stand.)

Mr. Martin: At this time, your Honor, may we offer into evidence the deposition, taken in Bonham, Texas, of Robert D. Franks and Leonard Riley, the same having been published this morning?

Mr. Johnson: To which we object your Honor. We have studied this deposition during the lunch hour. The deposition appears to us, the questions and answers, except for the preliminary questions on the first page of each witness to be incompetent, and irrelevant, and immaterial [77] to this particular action, that is an action between an insured and insurer on a policy of insurance for loss. We can find no relevancy whatsoever.

The Court: Very well, if you are not going to stipulate that it may be introduced, the same as if read in evidence, then you will have to read it and I will have to rule on each and every question to which an objection is made. I take it that the deposition was taken for use at this trial?

Mr. Martin: That is correct, your Honor.

The Court: We will have somebody take the witness stand.

Mr. Martin: May I suggest your Law Clerk, your Honor?

The Court: That will be satisfactory.

Mr. Martin: I will read the questions, your Honor, and Mr. Hess can read the answers.

The Court: Very well.

Mr. Martin: For the record, the cover sheet is cause No. 2012, the court and the title of the case being the same. This is the deposition of Robert D. Franks and Leonard Riley, taken by Jessie Varner, a shorthand reporter. For the record your true name is what?

Mr. Hess: Gerald W. Hess.

Mr. Martin: I will read the questions and you will [78] read the answers in this deposition, commencing on page 3, please.

ROBERT D. FRANKS

the deposition of Robert D. Franks was read as follows; the questions in the deposition having been asked by Mr. Edward Southerland.

Examination

By Mr. Southerland:

(Read by Mr. Martin.)

“Q. Would you state your name?

A. Robert D. Franks.

Q. Mr. Franks, yesterday when you were in our office, you advised us your wife had been taken to the hospital to undergo surgery; is she getting along all right?

A. Yes, sir; she is.

(Deposition of Robert D. Franks.)

Q. We are glad to hear it. Where do you live?

A. 320 East Boyd, here in Bonham, Texas.

Q. What official position, if any, do you hold with Supreme Trailer Company?

A. Vice-president and General Manager of Supreme Trailer Company and also an affiliate sales company, Southwest Mobile Homes Sales Company.

Q. Approximately how long have you held that position? A. Practically four years.

Q. Is Supreme Trailer Company a manufacturing plant? [79] A. Correct.

Q. What does Supreme Trailer Company manufacture?

A. Mobile homes and occasionally known as house trailers.

Q. Approximately how many people are employed at the Bonham plant?

A. Slightly over two hundred. I believe two hundred and four, last week.

Q. How long has the company been manufacturing house trailers, how long at Bonham, Texas, approximately?

A. Four and a half years at Bonham. Twelve years total in other locations.

Q. Is Supreme Trailer Company now manufacturing house trailers at any other location other than Bonham, Texas, during the past year or year and a half? A. No.

Q. Mr. Franks, as general manager of the local company—I believe you stated your position?

A. Yes, sir.

(Deposition of Robert D. Franks.)

Q. Mr. Franks, do you know, of your own knowledge, whether your company, during the past few years, sold house trailers to Aetna Trailer Sales?

A. Yes; been selling the entire chain of fourteen locations at least four or five years.

Q. Where is the home office of Aetna Trailer Sales? [80]

Mr. Johnson: To which question we will object on the ground that it is irrelevant and immaterial.

The Court: Will you read the question again?

Mr. Martin (Reading): "Where is the home office of Aetna Trailer Sales?"

The Court: He may answer.

"A. Salt Lake City. Formerly it was in Denver, until the death of the corporate president."

By Mr. Southerland:

(Read by Mr. Martin.)

"Q. Does Aetna Trailer Sales have a branch office in Boise, Idaho?

A. It has a sales lot in Boise.

Q. Mr. Franks, have you made a search of your company's records to determine if on or about May 4, 1956, your company delivered to Aetna Trailer Sales at Boise, Idaho, a house trailer, serial number 6995, model 146-F?

A. Yes; we did.

Q. Do you have the original invoice reflecting that transaction?

A. No; it was mailed to the main office of Aetna Trailer Sales, 1209 Broadway Street, Denver.

(Deposition of Robert D. Franks.)

Q. Do you have a duplicate record?

A. Yes; I do. We have from our accounting records invoice 2905.

Q. Will you let me see it? [81] A. Yes."

Mr. Martin: If the Court please, I think it is probably attached to the deposition. I will have to take it and have it marked, and received in evidence.

The Court: It has been admitted as Plaintiff's Exhibit No. 6, in evidence.

By Mr. Southerland:

(Read by Mr. Martin.)

"Q. Mr. Franks, I am referring to what is identified as Defendant's Exhibit 1"—

Mr. Martin: Now I, in this matter is Plaintiff's Exhibit No. 6.

"Q. (Reading): —which is invoice No. 2905, dated May 4, 1956, reflecting the sale of a trailer, model 146-F, serial Number 6995, and ask you to state if that invoice was prepared in your office?

A. Yes; it was.

Q. Was it prepared under your direct supervision? A. Yes.

Q. Are all invoices reflecting transportation of trailers prepared in your office and under your direct supervision? A. Yes, sir.

Q. Mr. Franks, if you know, please state how trailer No. 6995 was to have been delivered to Aetna Trailer Sales at Boise, Idaho? [82]

(Deposition of Robert D. Franks.)

A. This model home was the result of an order for such model, which was produced to meet their specification, in that, a few special items will be noted, such as washing machine, larger than usual heater and carpet. After the trailer is built in our factory, it was to be shipped by our truck to Aetna Trailer Sales office at Boise, and a separate freight bill from our transport division is available.

Q. I note that"—

Mr. Martin: The deposition states "D-1," which in the instant matter is Plaintiff's Exhibit No. 6.

"Q. (Reading): —bears the heading 'Southwest Mobile Homes Sales Corporation.' I note the Bill of Lading or invoice marked 'D-1' (Plaintiff's Exhibit No. 6) bears the heading 'Southwest Mobile Homes Sales Corporation.' What is Southwest Mobile Homes Corporation?

A. That is an affiliate sales company, which handles sales of all Supreme-Victor mobile homes in the Western portion of the United States. This is owned and operated by the same officers and stockholders as Supreme Trailer Company.

Q. Who are the stockholders of the Supreme Trailer Company?"

Mr. Johnson: To which we object on the grounds the witness is not competent to give that [83] information.

Mr. Martin: If the Court please, the witness has testified that—

The Court: He may so testify, if he knows. I do not know what the purpose of it is.

(Deposition of Robert D. Franks.)

A. (Reading): "Three brothers, known as Robert De Rose, Anthony De Rose, and Don De Rose."

By Mr. Southerland:

(Read by Mr. Martin.)

"Q. I will ask you are these three also the sole stockholders of Southwest Mobile Homes Sales Corporation?"

Mr. Johnson: We object to the question on the ground that it is irrelevant and also this witness is not competent to state that information.

The Court: He may answer.

"A. Yes."

By Mr. Southerland:

(Read by Mr. Martin.)

"Q. State if Supreme Trailer Company and Southwest Mobile Homes Sales Corporation have the same individuals as directors?"

Mr. Johnson: We object to the question that it is irrelevant and not the best evidence from this witness, your Honor.

The Court: He may answer.

"A. Yes, they have."

By Mr. Southerland:

(Read by Mr. Martin.)

"Q. Are these two companies separate corporations? [84] A. Yes.

(Deposition of Robert D. Franks.)

Q. I will ask you to state where the home office is of Southwest Mobile Homes Sales Corporation?

A. In Bonham, Texas.

Q. What is your position, if any, with Southwest Mobile Homes Sales Corporation?

A. Vice-president and general manager of that, as well.

Q. I will ask you to state if Southwest Mobile Homes Sales Corporation has executive and clerical personnel different from those of Supreme Trailer Company?

A. Basically, they are the same.

Q. Which corporation manufactures the house trailers?

A. Supreme Trailer Company.

Q. Which corporation sells the house trailers?

A. Southwest Mobile Homes Sales Corporation sells to the dealers in the Western area of the United States.

Q. Now, Mr. Franks, I will ask you to state if it is the practice of Supreme Trailer Company or Southwest Mobile Homes Sales Corporation—and I use the term interchangeably—to sell house trailers on credit?

A. No, as a general rule, we do not sell on credit.

Q. How are your sales effected, with reference to cash or credit?

A. Well, they are generally sold on a C.O.D. basis, [85] sight draft or floor plan basis.

Q. What do you mean by C.O.D.?

A. Normally speaking, we collect on delivery.

(Deposition of Robert D. Franks.)

Q. When a house trailer is sold C.O.D., is the driver required to collect for the trailer at the time of delivery? A. Normally, yes.

Q. When a trailer is sold to a dealer that maintains an account with your company, is payment subsequently made by check? A. Yes.

Q. Is that after delivery?

A. Yes, would be after delivery.

Q. I will ask you if any of your drivers are ever permitted to collect the sale price of trailers in cash?"

Mr. Johnson: To which question we object on the ground it is incompetent and irrelevant and immaterial; that this witness, setting up a transaction between his agent and employee, and his dealer, has nothing to do with the suit brought here, by the insurer and the insurance company.

The Court: He may answer.

"A. No, never done."

By Mr. Southerland:

(Read by Mr. Martin.)

"Q. I will ask you if any of your drivers are ever [86] permitted to indorse a check payable to Supreme Trailer Company or Southwest Mobile Homes Sales Corporation?"

Mr. Johnson: To which question we object for the same reasons, that this witness should not be allowed to set out a practice between that agent and his company, his company and his dealers, as

(Deposition of Robert D. Franks.)

second and third parties, that it is irrelevant in this suit.

The Court: He may answer.

“A. No, they are not.”

The Court: In line with this question, I take it, Mr. Johnson, is to show what authority the people had.

“A. No, they are not. No checks received from dealers are never cashed. They are always indorsed by a restrictive rubber stamp.”

By Mr. Southerland:

(Read by Mr. Martin.)

“Q. Does Supreme Trailer Company transport its trailers with its own trucks or vehicles, or does it use commercial transportation?”

A. We do both, but haul the largest part ourselves.

Q. Do you know, of your own knowledge, how trailer identified by Number 6995, and reflected by Invoice marked ‘D-1’ (Plaintiff’s Exhibit No. 6) was transported to Boise, Idaho?

A. Yes, shipped by one of our trucks, on our freight billing or Invoice 3212, dated the same date as our [87] sales invoice.

Q. Do you have the original?

A. No, it was mailed to the home office of the Aetna Trailer sales in Denver.

Q. Mr. Franks, you hand me what is identified

(Deposition of Robert D. Franks.)

as Invoice 3212, which is identified as freight bill and we will ask the reporter to mark it.”

Mr. Martin: Mr. Bailiff, would you give me the Exhibit attached to page 35 of that deposition and would you have the Clerk mark this?

The Clerk: Plaintiff’s Exhibit No. 16.

(The document referred to was marked Plaintiff’s Exhibit No. 16, and was received in evidence.)

By Mr. Southerland:

(Read by Mr. Martin.)

“Q. I will ask you if this is a duplicate of the original freight bill issued May 4, 1956?

A. Yes, our accounting department copy of our original billing.

Q. Was this copy made in your office and under your supervision? A. Yes, sir.

Q. Do you know what type vehicle was used to transport trailer No. 6995 to Boise, Idaho?

A. One of our regular three-quarter ton trucks.”

Mr. Martin: Your Honor, I am now going to offer [88] in evidence Defendant’s Exhibit No. 16.

Mr. Johnson: We have no objection, your Honor.

The Court: It may be admitted.

(The document referred to was marked Defendant’s Exhibit No. 16 and was received in evidence.)

(Deposition of Robert D. Franks.)

By Mr. Southerland:

(Read by Mr. Martin.)

“Q. A pickup?

A. Modified to our purpose.

Q. Do you know the driver of that truck?

A. Yes.

Q. Who was he?

A. Joseph Ralph Roberts.

Q. Do you know a man named Albert Pauls?

A. No.

Q. Have you ever known anyone named Albert Pauls ever to have been employed by either Supreme Trailer Company or Southwest Mobile Homes Sales Corporation?”

Mr. Johnson: To which we object on the grounds that it does not ask this witness if such employee was employed and if he knows him.

The Court: He may answer.

“A. No, not that I know of.”

By Mr. Southerland:

(Read by Mr. Martin.)

“Q. Mr. Franks, when your company sells a house trailer, what instrument, if any, does it deliver to the [89] purchaser to show passage of title to the trailer?”

Mr. Johnson: To which question we object on the grounds that it is irrelevant, immaterial to this lawsuit, and further that it would be irrelevant and immaterial to any suit as to establish anything which might be used to create legal parties.

(Deposition of Robert D. Franks.)

The Court: He may answer.

"A. We furnish upon receipt of payment a manufacturer's certificate of origin, which is a sales form identical to that of any automobile manufacturing company, with the exception in the upper lefthand corner it says, 'Semi-trailer, House Car.' "

Mr. Martin: Mr. Bailiff, would you please give to me the instrument on page 36 of the deposition?

The Clerk: Marked as Defendant's Exhibit No. 17 for identification.

(The document referred to was marked Defendant's Exhibit No. 17 for identification.)

By Mr. Southerland:

(Read by Mr. Martin.)

"Q. I hand you what has been identified as D-3, (Defendant's Exhibit No. 17) and ask if this is the certificate of origin that you refer to?

A. Yes, sir.

Q. State if this certificate is issued in compliance with the Motor Vehicle Statutes of the State of Texas? [90]

Mr. Johnson: To which question we object upon the grounds that this calls for a conclusion and it also calls for a conclusion of fact as well as a conclusion of law, and this certificate has not been shown to be the certificate that was actually involved in the sale—excuse me, the delivery of the trailer No. 6955.

(Deposition of Robert D. Franks.)

The Court: As I understand it, Gentlemen, it is admitted that there was no certificate of title issued by this company, or anyone else.

Mr. Martin: That is the defense in this case.

The Court: Why is this material, that is admitted as far as I understand, the defendant has admitted that no certificate of title from this company for this trailer. I am going to sustain the objection. I do not think that it is material. That is a fact that is not disputed.

Mr. Martin: We will withdraw Defendant's Exhibit No. 17.

The Court: Very well.

By Mr. Southerland:

(Read by Mr. Martin.)

"Q. When is this certificate issued to the dealer?

A. Upon receipt of payment.

Q. Is this certificate ever issued prior to payment?

A. No, generally, they are not even typed up until payment is received [91]

Q. Are all certificates of origin reflecting the sale of trailers prepared in your office?

A. Yes.

Q. Prepared by you or under your direct supervision? A. That's right.

Q. Mr. Franks, with reference to 'D-1' (now known as Plaintiff's Exhibit No. 6) which is invoice

(Deposition of Robert D. Franks.)

2905, showing transportation of a trailer to Aetna Trailer Sales at Boise, Idaho, I will ask you to state if any certificate of origin has ever been issued by Supreme Trailer Company or Southwest Mobile Homes Corporation to Aetna Sales—Aetna Trailer Sales, reflecting the sale of this trailer?

A. No, never been a certificate issued to that.

Q. Has a certificate been issued to any other person or agency? A. It has.

Q. To whom was it issued?

A. Certificate of origin was issued to Great American Indemnity.

Q. Can you state approximately when that certificate was issued?

A. Yes, issued on receipt of check from Great American Indemnity who was our bonding agent.

Q. Mr. Franks, was a certificate of origin on trailer No. 6995 issued to Great American Indemnity several [92] months after May 4, 1956, and approximately two or three months ago?

A. Yes, that's correct.

Q. Why was a certificate of origin issued to Great American Indemnity?"

Mr. Johnson: To which question we object on the grounds that it is incompetent, irrelevant, and immaterial; that the—it invades the province of the Judge in the case as part of the fact, that the reason, if any, is fully immaterial.

The Court: I do not see the materiality of that, Mr. Martin.

(Deposition of Robert D. Franks.)

Mr. Martin: Your Honor, it has now been admitted in the case that it was never issued to the plaintiff, Beatrice Nelson, it was issued to the Great American Indemnity Company. The witness has already testified that it is issued on receipt of payment and we think it is material to show that point.

The Court: He may answer. I will give it such consideration as I deem necessary.

“A. Our drivers were bonded by Great American Indemnity, inasmuch as they handle both valuable merchandise and frequently return checks to the factory, and Mr. Joseph Roberts had been bonded and loss had been sustained by us inasmuch as we could not locate this mobile home, although [93] we did recover the truck from which it had been delivered in Boise.”

By Mr. Southerland:

(Read by Mr. Martin.)

“Q. The trailer as reflected by ‘D-1’ (now known as Plaintiff’s Exhibit No. 6), which was to be transported to Boise, Idaho, to Aetna Trailer Sales was transported by Joseph Roberts by a company truck, is that correct? A. Yes.

Q. Was that trailer ever delivered to Aetna Trailer Sales at Boise? A. No, it was not.

Q. Has that trailer ever been recovered by either of your companies? A. No, sir.

Q. Was a claim for loss of the trailer filed with Great American Indemnity? A. Yes, sir.

(Deposition of Robert D. Franks.)

Q. Did that company pay the amount of your loss? A. Yes, sir.

Q. After that was a certificate of origin issued to Great American Indemnity? A. Yes.

Q. Do you know where Joseph Roberts is now?

A. No, sir.

Q. Have you or any of your employees heard from him [94] since he left Bonham to transport the trailer we have been talking about to Idaho?

A. He contacted Mr. Riley once or twice for funds.

Q. Have you or any of your people heard from him since?

A. No, not since his actual departure from the factory area.

Q. Do you know what instruments, with reference to invoices, freight bills, etc., he had in his possession when he was delivering this trailer to Idaho?

A. Yes, sir. Due to the fact the Aetna Trailer Sales at Boise is a sales lot only and have no accounting or payment function, the only papers went with the trailer in this case were a copy of the invoice and an inspection report, which was in two copies. The inspection report was for Mr. Roberts to have the branch manager sign to verify delivery and duplicate invoice was my information copy for the branch manager so he would know how to price the merchandise after receiving it. The original papers, the original invoice and freight bill were

(Deposition of Robert D. Franks.)

mailed to Denver, to the Denver office of Aetna Trailer Sales for payment, when they would be notified by their branch manager he had received the trailer as ordered and in good condition. The branch manager doesn't have authority to disburse funds other than petty cash funds. All payments and records are [95] held in the Denver office and, therefore, we look to the Denver office for payment and had not furnished the original invoice with the driver—had not furnished the driver with the original—for the Boise location.”

Mr. Johnson: To correct the record, on the question read to the witness, or copy reads, “Do you know what instruments, with reference to invoices, freight bills, etc., he had in his possession when he was delivering this trailer to Idaho?” Not Boise?

Mr. Martin: Did I say Boise?

By Mr. Southerland:

(Read by Mr. Martin.)

“Q. I note that Defendant's Exhibit 1” (now known as Plaintiff's Exhibit No. 6), “contains this language: ‘In the event of payment by check other than a cashier's check or a certified check, it is expressly understood that title shall remain in the seller until said check is honored.’ Is that language on all your invoices?”

A. Copies are printed the same way as the originals.

(Deposition of Robert D. Franks.)

Q. Do either of your companies sell trailers to the ultimate user?

A. No, wholesale only. We do not sell retail to individual buyers.

Q. You sell only to dealers?

A. Yes, that's right.

Q. Mr. Franks, in some instances, your drivers are [96] instructed not to deliver a trailer unless payment is received at the time of delivery, is that correct?

A. Yes, it is.

Q. How are the drivers instructed to receive payment?

A. By check only.

Q. How are your dealers instructed to pay for trailers?

A. By check only.

Q. To whom are the checks payable?

A. To the Southwest Mobile Homes Sales Corporation.

Q. With reference to the sale of trailer No. 6995, to Aetna Trailer Sales, am I correct in assuming you would have received payment by check from the Denver office when the Boise office had notified the Denver office of the receipt of the trailer?"

Mr. Johnson: To which we object on the ground that it is assuming facts not in evidence and it is also not warranted by the evidence, and also asking the witness for what would have been, rather than what actually happened.

The Court: Objection sustained.

(Deposition of Robert D. Franks.)

By Mr. Southerland:

(Read by Mr. Martin.)

“Q. Are your drivers ever permitted to accept money as distinguished from a check for the delivery of a trailer? [97]

A. No, that is not permitted.

Q. Are your drivers ever permitted to sell or negotiate the sale of a trailer?

A. No, their only function is to make delivery. We have a separate sales force that would make the negotiation.

Q. Am I correct in assuming all sales are made by salesmen of Supreme Trailer Company at Bonham, Texas?

A. They are made by salesmen and subject to approval of my office.

Q. Was Mr. Roberts a salesman for Supreme Trailer Company or Southwest Mobile Homes Sales Corporation? A. No, sir.

Q. Approximately, how many motor vehicles does your company use for the transportation of trailers?

A. About twenty to twenty-two.

Q. I will ask you to state if those vehicles have lettering or identification on them reflecting their ownership?

A. All we have now do, and in the past not all were lettered, but the greater number of them had both our name and the local and State permit numbers printed on the doors.

(Deposition of Robert D. Franks.)

Q. What do you mean by the name being printed, what name? [98]

A. Supreme Trailer Company, Bonham, Texas.

Q. State, if you know, whether the pickup truck used by Joseph Roberts to transport trailer No. 6995 had the lettering on the cab 'Supreme Trailer Company, Bonham, Texas'?

A. I couldn't say for sure if that was lettered as our present custom, or not.

Q. Do you have that vehicle?

A. No, we had since traded it in, sometime last fall.

Q. Has Mr. Roberts ever returned to Bonham?

A. No, he left the vehicle in Boise and we didn't even know he got to Boise until we were notified by the police department that the truck had been parked several days in the same location.

Q. If he didn't return the vehicle, how did you get it?

A. We sent a replacement mobile home to Boise to complete our sales transaction with Aetna and with the second a towing vehicle that returned the one driven by Mr. Roberts.

Q. How did you locate the vehicle driven to Idaho by him?

A. The police department notified us that one of our vehicles was parked for several days unattended.

Q. Do you know if you or any representative of your [99] company has filed a complaint against

(Deposition of Robert D. Franks.)

Joseph Roberts charging him with embezzlement of the trailer? A. Yes, I believe we have."

Mr. Johnson: To which we ask that the answer be stricken, the question not definitely stating whether or not such action was filed.

The Court: It may stand.

By Mr. Southerland:

(Read by Mr. Martin.)

"Q. Who filed it?

A. I believe Mr. Riley did and I probably signed it.

Q. Do you know if the warrant is outstanding for the arrest of Joseph Roberts, if there is a warrant outstanding for his arrest?

A. Yes, I believe so.

Q. Do you know if he had been apprehended under that warrant?

A. To my knowledge, no.

Q. Do you know Beatrice Nelson, plaintiff in a cause pending in the United States District Court for the District of Idaho, Eastern Division, No. 2012; do you know Beatrice Nelson? A. No.

Q. Have you ever had communication with her in any way? [100] A. No.

Q. Have you ever seen her? A. No.

Q. Has your company or either of them ever sold a trailer of any kind to Beatrice Nelson?

A. No, sir.

Q. Did Joseph R. Roberts have any authority to

(Deposition of Robert D. Franks.)

sell trailer No. 6995, identified as Defendant's Exhibit 1, (now known as Plaintiff's Exhibit No. 6) to Beatrice Nelson?

A. No, his instruction was to deliver it to Aetna Trailer Sales at their Boise, Idaho, location.

Q. Did Joseph R. Roberts ever have authority to deliver that trailer to Beatrice Nelson?

A. No, he did not.

Q. Mr. Franks, again I call your attention to the language of Defendant's Exhibit No. 1, (now known as Plaintiff's Exhibit No. 6) which states: 'In the event of payment by check other than a cashier's check or a certified check, it is expressly understood that title shall remain in the seller until said check is honored,' and ask you to state if Supreme Trailer Company or Southwest Mobile Homes Sales Corporation ever transfer the title to a trailer before payment is received?

A. No, they do not.

Q. I will ask you to state also, if the issuance of [101] the certificate of origin, identified as Defendant's Exhibit 3——"

Mr. Martin: It is not in evidence, I will change the question, your Honor, may I withdraw that question?

The Court: Yes, you may.

By Mr. Southerland:

(Read by Mr. Martin.)

"Q. I will ask you to state also, if the issuance

(Deposition of Robert D. Franks.)

of the certificate of origin, is the only way and the exclusive way that the title to a trailer is transferred?"

Mr. Johnson: Now, we object to the question on the ground that it is invading the province of the tryer of the fact, it is a question of fact of law and this witness is not competent to give an opinion.

The Court: He may answer. It goes to show how they transfer title.

Mr. Johnson: Yes.

"A. It is."

Mr. Southerland:

(Read by Mr. Martin):

"I believe that's all."

The Court: Will you identify the deposition?

Mr. Martin: This is the deposition of Leonard Riley, your Honor.

The Court: Very well. [102]

LEONARD RILEY

the deposition of Leonard Riley was read as follows, the questions in the deposition having been asked by Mr. Edward Southerland.

By Mr. Southerland:

(Read by Mr. Martin.)

"Q. Please state your name?

A. My name is Leonard Riley.

Q. Where do you live, Mr. Riley?

(Deposition of Leonard Riley.)

A. 256 Graham Street, Bonham.

Q. How long have you lived in Bonham?

A. Approximately eighteen months.

Q. Where did you live before that?

A. Chalmers, Indiana.

Q. How old are you, Mr. Riley?

A. Thirty-four.

Q. What position, if any, do you hold with Supreme Trailer Company or Southwest Mobile Homes Sales Corporation?

A. I am transport supervisor.

Q. Where is the home office of Supreme Trailer Company? A. Bonham, Texas.

Q. Where in Bonham, with reference to location?

A. Just north of town on U. S. Highway 78, at Jones Field.

Q. Both companies occupy the same building and have [103] the same personnel?

A. They do.

Q. As transport supervisor, what are your official duties?

A. I am responsible for delivering mobile homes to all parts of the United States, to our dealers in the United States.

Q. Were you transport supervisor on May 4, 1956? A. Yes, sir.

Q. Do you have clerical personnel working under you? A. Yes.

Q. Do you maintain certain records or are certain records maintained under your direct supervision? A. Yes, sir.

(Deposition of Leonard Riley.)

Q. What records are maintained by your office?

A. All records pertaining to transportation.

Q. What does Supreme Trailer Company manufacture?

A. Mostly mobile homes.

Q. Also referred to as house trailers?

A. Yes, sir.

Q. I believe you stated Supreme Trailer Company manufactures mobile homes?

A. Yes.

Q. Which corporation sells the mobile homes?

A. Southwest Mobile Homes Sales Corporation.

Q. In a technical sense, are you the transport supervisor of Southwest Mobile Homes Sales Corporation?

A. Yes.

Q. Does your company sell trailers to dealers?

A. Yes.

Q. Does your company sell trailers to individual users—sell them at retail?

A. We do not sell retail.

Q. I will ask you to state, since you have been connected with Supreme Trailer Company and Southwest Mobile Homes Sales Corporation, has either company made sales to Aetna Trailer Sales?

A. Yes, they have.

Q. Where is the home office of Aetna Trailer Sales, if you know?

A. At the present time, Salt Lake City.

Q. I will ask you if the company has a subordinate office or sales agency?

A. Yes.

Q. Does the company have a sales agency at Boise, Idaho?

A. Yes.

(Deposition of Leonard Riley.)

Q. How does your company transport to the dealer its mobile homes? [105]

A. We have our own trucks for the transportation.

Q. What type truck do you use?

A. We have used Fords and Chevrolets and GMC's, three-quarter ton to a ton. We have had two-ton trucks.

Q. Is the trailer pulled behind the truck?

A. Yes.

Q. Is it customary for the driver to pull anything on his return trip?

A. No, not customary.

Q. I will ask you to state if on or about May 4, 1956, you issued instructions for the transportation of a house trailer to Aetna Trailer Sales at Boise, Idaho?

A. Yes, I did.

Q. I hand you what has been identified as Defendant's Exhibit 1," (now known as Plaintiff's Exhibit No. 6) "and ask you to state what that is.

A. Invoice for trailer No. 6995.

Q. To be delivered where?

A. To Aetna Trailer Sales, Boise, Idaho.

Q. In whose office was this invoice prepared?

A. In the sales office—Mr. Franks' office.

Q. What do your records show with reference to the transportation of this vehicle, No. 6995, to Aetna Trailer Sales at Boise, Idaho?

A. Driver assigned to take that trailer was [106] Joseph R. Roberts.

(Deposition of Leonard Riley.)

Q. Was Joseph R. Roberts an employee — one of your employees? A. Yes, he was.

Q. Do you know approximately how long he had been working for the company?

A. He was hired on or about March 28, 1956.

Q. Had he made other trips for the company?

A. Yes.

Q. Do you know a man by the name of Albert Pauls? A. No.

Q. Have you made examination of the Personnel Records of Supreme Trailer Company and Southwest Mobile Homes Sales Corporation to determine if any person named Albert Pauls has ever been employed by either company at the Bonham plant? A. Yes, I have.

Q. Has any such person ever been employed by either company at the Bonham plant?

A. We have no record of it.

Q. When Joseph R. Roberts left Bonham, Texas, with your company's truck and trailer No. 6995, what written instruments did he carry with him?

A. He carried final inspection sheet, a copy of the trailer invoice, and a copy of the freight bill.

Q. All right.

A. Inspection sheet, copy of invoice, and freight bill copy.

Q. What is the final inspection report?

A. That is a report prepared by production line, listing equipment in the trailer, and is used to signify the trailer is ready for shipment.

(Deposition of Leonard Riley.)

Q. Is the driver required to bring back the final inspection report signed by the consignee?

A. Yes.

Q. If, in any instance, the trailer is damaged in transit, is such damage supposed to be reflected on the final inspection report as signed by the consignee?

A. Yes, the dealer will mark any damage or changes on the inspection sheet that is returned to us.

Q. Do you have the original or an exact copy of the final inspection sheet Mr. Roberts carried with him on or about May 4, 1956, when he left Bonham?

A. I have a duplicate copy.

Q. Do you know where the original is?

A. No.

Q. Is the copy you have an exact duplicate of the original? A. Yes.

Q. Was it made at the same time? [108]

A. Yes."

Mr. Martin: Mr. Bailiff, would you please hand to the Clerk the instrument which is attached to page 37 of the deposition?

The Clerk: Marked as Defendant's Exhibit No. 18 for identification.

(The document referred to was marked Defendant's Exhibit No. 18 for identification.)

By Mr. Southerland:

(Read by Mr. Martin.)

(Deposition of Leonard Riley.)

“Q. Mr. Riley, I hand you what has been identified as D-4,” (now known as Defendant’s Exhibit No. 18 for identification) “which is a final inspection sheet, and ask you if the signature ‘Joseph R. Roberts’ is the signature of your driver, Joseph R. Roberts?”

A. Joseph R. Roberts signed this inspection sheet, yes.

Q. Did he sign it before he left Bonham?

A. Yes, he did.

Q. With reference to the penciled notation on it, I will ask you if that was made at the time the original inspection sheet was issued by you, or later?

A. It was made by me later — the penciled notations were.”

Mr. Martin: We now offer that inspection sheet as Defendant’s Exhibit 18 in evidence. [109]

Mr. Johnson: We have no objection, your Honor.

The Court: It may be admitted.

(The document referred to was marked Defendant’s Exhibit No. 18 and was received in evidence.)

By Mr. Southerland:

(Read by Mr. Martin.)

“Q. Approximately how many trailers have you shipped to Aetna Trailer Sales at Denver, or its branch offices, since you have been employed at the Bonham plant?

(Deposition of Leonard Riley.)

A. I do not remember the exact number—quite a few.

Q. I will ask you to state, if you know, what happened to the original invoice No. 2905, reflecting transportation of the trailer on May 4, 1956?

A. It was mailed to the main office of Aetna Trailer Sales at Denver, Colorado.

Q. In May, 1956, did Aetna Trailer Sales maintain an account with your company? A. Yes.

Q. Did it pay for a trailer as it was received and delivered?

A. The trailer was received on a branch lot, and that lot manager would notify the main office of the delivery of the trailer and the main office in turn would pay our company.

Q. How would payment be made? [110]

A. By check.

Q. I will ask you to state, if you know, whether it is the policy of Supreme Trailer Company or Southwest Mobile Homes Corporation to transfer title to a trailer before payment is received?

A. No, it is not.

Q. How does your company, or companies, transfer title to a trailer?

A. The company issues a Certificate of Origin.

Q. Are those certificates issued by you or in your office? A. No.

Q. In whose office are they issued?

A. Issued in Mr. Franks' office.

(Deposition of Leonard Riley.)

Q. How are your drivers paid, on a monthly salary? A. By mileage.

Q. You also pay their expenses while they are on the road?

A. Living expenses we don't pay, truck expenses we do pay.

Q. State if your drivers are ever permitted to collect for a trailer when it is delivered.

A. They are never permitted to collect cash for the trailer, although, at times, they are instructed to return the check made payable to the company. [111]

Q. Are your drivers ever permitted to endorse or cash any check payable to Supreme Trailer Company or Southwest Mobile Homes Sales Corporation? A. No.

Q. Are your drivers ever permitted to accept payment by check payable to the driver?

A. No.

Q. Mr. Riley, I believe you have testified that Mr. Roberts had in his possession in May, 1956, when he was delivering trailer No. 6995 to Boise, a duplicate copy of the invoice, and freight bill, and final inspection sheet in duplicate, is that correct?

A. Yes.

Q. I will ask you to state if Joseph Roberts had any other instruments issued by any department of Supreme Trailer Company or Southwest Mobile Homes Sales Corporation, which would indicate that he, as the driver, had any authority to sell the trailer and collect the money therefor?

(Deposition of Leonard Riley.)

A. No, sir.

Q. What were Joseph Roberts' duties?

A. His duty was to deliver the trailer to the dealer to which it was consigned and get the dealer to sign for the trailer and to return to Bonham.

Q. Do you know Albert Pauls? [112]

A. No, sir.

Q. Did he ever work for either of your companies?

A. To my knowledge, he never has.

Q. Now, Mr. Riley, was trailer No. 6995, as reflected by Defendant's Exhibit 1" (now known as Plaintiff's Exhibit No. 6), "ever delivered to Aetna Trailer Sales at Boise, Idaho? A. It was not.

Q. Did you have any communication with Joseph Roberts after he left Bonham, Texas, on or about May 4, 1956? A. Yes, sir.

Q. What was the nature of that communication?

A. On or about May 10, Joseph Roberts called from Raton, New Mexico, and advised me he was having trouble with his truck and requested that some money be wired to him, and I sent him fifty dollars by Western Union. On May 14, Mr. Roberts wired from Colorado Springs, Colorado, that he needed another sixty dollars and would pick it up in Colorado Springs. I wired him the money to Colorado Springs. On May 16, Mr. Roberts wired for an additional sixty dollars. This wire was from American Falls, Idaho. When I received this wire, I wired Mr. Roberts asking him what his trouble

(Deposition of Leonard Riley.)

was, and in reply I received a wire which stated he was still having trouble with his truck. On [113] May 17, I sent Mr. Roberts sixty dollars to American Falls.

Q. Did you have any communication with Joseph Roberts after May 17?

A. I have not heard from him since May 17.

Q. State what the practice is; is it the practice of your company to send only one driver when a trailer is to be delivered?

A. Yes, sir.

Q. Did Joseph Roberts have any authority to take anyone with him on his trip to Idaho?

A. No, sir.

Q. Do your company's rules prohibit a driver from taking any passengers?

A. They do, yes, sir.

Q. How did you learn that trailer, No. 6995, was never delivered to Aetna Trailer Sales at Boise, Idaho?

A. I called the dealer in Boise of Aetna Trailer Sales.

Q. And you were informed over the telephone the trailer had not been delivered?

A. Yes, sir.

Q. Then, what did you do?

A. About two days later I called Boise City Police and reported the matter to them and asked them to keep a lookout for Joseph Roberts and the trailer. [114]

Q. Did the City Police ever make a report to you with reference to the trailer or truck?

(Deposition of Leonard Riley.)

A. No, they didn't.

Q. Has the truck ever been recovered?

A. Yes, sir.

Q. How was it recovered?

A. We were notified by the Chief of Police at Garden City, Idaho. They notified me the truck was stored at Tommie's Auto Wrecking Company.

Q. At what town?

A. Garden City, Idaho.

Q. Did you then send for the truck?

A. Yes, sir.

Q. Was it returned to Bonham? A. Yes.

Q. Is it still owned by the company or has it been sold? A. It has been sold.

Q. Has trailer 6995 ever been recovered by Supreme Trailer Company or Southwest Mobile Homes Sales Corporation? A. No, sir.

Q. To this date, has trailer No. 6995 ever been delivered to Aetna Trailer Sales at Boise, Idaho?

A. To my knowledge, it hasn't. [115]

Q. I will ask you to state whether or not your company had extensive search made in Idaho to locate the trailer and truck?

A. Yes, we did.

Q. I will ask you to state if a complaint has been filed against Joseph R. Roberts for embezzlement of the trailer? A. Yes, sir.

Q. Do you know who signed the complaint?

A. I did.

Q. I will ask you to state if a warrant has been

(Deposition of Leonard Riley.)

issued for the arrest of Joseph R. Roberts?

A. Yes, sir.

Q. Do you know if that warrant has ever been served? A. I don't know.

Q. Do you know if Joseph R. Roberts has ever been apprehended?

A. To my knowledge, he has not.

Q. Has Joseph R. Roberts returned to Bonham since May, 1956?

A. No, not to my knowledge.

Q. To your knowledge has he returned to Bonham since May, 1956? A. No. [116]

Q. Does he have any money coming to him from your company, or is he overdrawn?

A. Until Joseph Roberts would have returned all expense tickets, it is unknown whether we owed him or he owed us.

Q. Is it your company's policy to bond all your drivers? A. Yes, sir.

Q. Was Joseph Roberts bonded by a surety company? A. Yes, he was.

Q. Do you know if the surety company has paid Supreme Trailer Company or Southwest Mobile Homes Sales Corporation for the loss of the trailer No. 6995? A. They have.

Q. Do you know the name of that surety company? A. Great American Indemnity.

Q. Do you know a lady by the name of Beatrice Nelson? A. No, sir.

Q. Have you had any communication from a

(Deposition of Leonard Riley.)

lady named Beatrice Nelson who lives in the State of Idaho? A. No.

Q. Do you know if the truck driven by Joseph Roberts to transport trailer 6995 to Boise, Idaho, bore any lettering on the cab to identify it as being owned by either Supreme [117] Trailer Company or Southwest Mobile Homes Sales Corporation?

A. I do not know.

Q. Do all the company's trucks now bear such lettering? A. Yes, they do.

Q. In May, 1956, did the company's trucks bear such lettering?

A. No, part of them were lettered and part were not.

Q. I hand you what has been identified as "D-1," (now known as Plaintiff's Exhibit No. 6), "D-2," (now known as Defendant's Exhibit No. 16) "and D-4" (now known as Defendant's Exhibit No. 18), "and ask you to state if each of these exhibits is a carbon copy of the original, made at the same time as the original was made?

A. Yes, they are except for my penciled lettering on Exhibit 4, the Final Inspection Sheet."

Mr. Martin: For the record, Exhibit 4 is Defendant's Exhibit No. 18.

Mr. Southerland (Read by Mr. Martin): "All right, that will be all."

Mr. Martin: We now offer the complete deposition into the record, for the convenience of the Court, other than that portion which the Court sustained.

(Deposition of Leonard Riley.)

Mr. Johnson: If the Court please, we have [118] no objection taking a copy of the deposition.

The Court: The deposition is in the record, the Reporter took it.

Mr. Martin: Yes, I know, your Honor, but——

The Court: I will probably refer to it.

Mr. Martin: The defense rests.

Mr. Johnson: If it please the court, at this time could we have a five minute recess?

The Court: Yes, we will take a short recess.

(The Court took a short recess.)

Mr. Johnson: At this time, your Honor, we would like to call Mr. Dan Bates.

The Court: This is rebuttal, I take it.

DANIEL H. BATES

recalled as a witness, in rebuttal, testified as follows:

The Clerk: You have been sworn, just take the witness stand, please.

By Mr. Johnson:

Q. Mr. Bates, you are the Mr. Bates that was sworn this morning, is that correct?

A. Yes, sir.

Q. And, carrying your mind back to May 17, 1956, that day that you met Joseph Roberts and Albert Pauls, on that date, in the company of Joseph Roberts did you visit [119] Judge Loofborrow's office in American Falls?

A. Yes, sir.

Q. And what was said at that time between Beatrice Nelson and Judge Loofborrow?

Mr. Martin: To which we object, your Honor, it is not proper rebuttal.

The Court: The objection will be sustained.

Mr. Johnson: If it please the Court, we are attempting to show what actually did happen rather than through hearsay was testified happened at the meeting between Judge Loofborrow and Beatrice Nelson.

Mr. Martin: If the Court please, that was his case in chief this morning when he had this witness on the stand, we still object to that as improper rebuttal, irrespective of what he is trying to do.

Mr. Johnson: The witness established at that

(Testimony of Daniel H. Bates.)

time that Mr. Roberts was an employee and agent of the defendant, that came out through the deposition.

The Court: He may answer for what it is worth.

Q. (By Mr. Johnson): What conversation did take place at that time?

Mr. Martin: Does the record show that I have my objection as being improper rebuttal?

The Court: Yes.

Mr. Martin: I further object to this [120] question as being hearsay as to the defendant and not binding on the defendant.

Mr. Johnson: This question is aimed only at showing what actually did take place regarding what the defendant has shown through Stan Smith was said to have taken place at a certain time. This is merely to corroborate the plaintiff in her testimony as to what actually did take place.

Mr. Martin: We submit, your Honor, that is his case in chief.

The Court: Objection sustained. You should have corroborated your client and your case in chief.

Mr. Johnson: We have no further questions of this witness.

Mr. Martin: No questions.

(The witness left the stand.)

Mr. Johnson: At this time I would like to call Beatrice Nelson.

BEATRICE NELSON

recalled as a witness, in rebuttal, testified as follows:

By Mr. Johnson:

Q. You are the plaintiff in this law suit?

A. Yes, sir.

Q. And were sworn this morning? [121]

A. Yes, sir.

Q. This morning Mr. Martin asked you the question regarding a law suit involving this trailer, other than this one. Mrs. Nelson, was a suit ever filed against you by Supreme Trailer Company, Southwest Mobile Homes Sales Company, or Great American Indemnity Company on this trailer?

A. No, sir.

Q. Did you eventually sell this particular trailer house to any one in the year 1957?

Mr. Martin: To which we object as being improper rebuttal, not having anything to do with the issues in this case; it is incompetent, irrelevant, and immaterial.

The Court: She may answer, I do not know what the value is.

Q. (By Mr. Johnson): Did you sell it to anyone? A. Yes, sir.

Mr. Johnson: We have no further questions, Your Honor.

Mr. Martin: No further questions.

(The witness left the stand.)

Mr. Johnson: We now rest, your Honor.

Mr. Martin: Nothing further, your Honor.

The Court: Very well. How do you gentlemen want [122] to handle this matter, do you want to argue it orally?

Mr. Martin: I would prefer to submit it on a brief, your Honor.

Mr. Johnson: Whatever is most convenient with the Court, either way.

The Court: You have a legal question, more than anything else. The record may show that oral argument is waived and the case will be submitted on briefs.

[Endorsed]: Filed March 20, 1958. [123]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Idaho—ss.

I, Ed M. Bryan, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing papers are that portion of the original files designated by the parties and as are necessary to the appeal under Rule 75 (RCP):

1. Petition for removal (copy of complaint attached).
2. Certified copies from Clerk of the District Court (copies of complaint and order of removal attached).

3. Amended complaint.
4. Motion to amend complaint.
5. Stipulation and order to amend complaint.
6. Motion to dismiss.
7. Record of hearing of May 2, 1957.
8. Answer.
9. Plaintiff's request for admissions filed Feb. 26, 1957.
10. Defendant's response to request for admissions, filed April 2, 1957.
11. Plaintiff's request for admissions, filed Aug. 14, 1957.
12. Defendant's answer to request for admissions, filed Aug. 20, 1957.
13. Plaintiff's request for admissions, filed Oct. 4, 1957.
14. Defendant's answer to request for admissions, filed Nov. 12, 1957.
15. Plaintiff's interrogatories, filed Oct. 4, 1957.
16. Defendant's answer to interrogatories, filed Nov. 12, 1957.
17. Transcript of testimony.
18. Plaintiff's exhibits 1, 2, 3, 4, 5, 6 and 14; and Defendant's exhibits 8, 9, 10, 11, 16 and 18.
19. Findings of fact and conclusions of law, filed Feb. 17, 1958.
20. Judgment, filed Feb. 17, 1958.
21. Notice of appeal.
22. Bond for costs on appeal.
23. Designation of contents of record on appeal.
24. Statement of points on appeal.

In Witness Whereof I have hereunto set my hand and affixed the seal of said court this 18th day of April, 1958.

[Seal] /s/ ED M. BRYAN,
Clerk.

[Endorsed]: No. 15999. United States Court of Appeals for the Ninth Circuit. Beatrice Nelson, Appellant, vs. New Hampshire Fire Insurance Company, a Corporation, Appellee. Transcript of Record. Appeal From the United States District Court for the District of Idaho, Eastern Division.

Filed: April 21, 1958.

Docketed: April 28, 1958.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15999

BEATRICE NELSON,

Appellant,

vs.

NEW HAMPSHIRE FIRE INSURANCE COM-
PANY,

Respondent.

APPELLANT'S STATEMENT OF POINTS

Plaintiff-appellant herewith presents her statement of points upon which she will rely on the Appeal in this matter.

I.

That the trial court erred in entering judgment in favor of the defendant and against the plaintiff.

II.

The trial Court erred in holding and finding relevant, in determining the contractual rights and duties between an insured and an insurer, the title questions between insured and third parties concerning subject trailer house in possession of insured both at the time of issuance of policy and the date of loss, and otherwise failing to recognize the difference between a title contest over personal property and a contractual claim based on an insurance policy.

III.

That the trial court erred:

(a) In finding of fact VI in holding and finding that "The plaintiff knew or by the exercise of any degree of care or caution should have known that neither the said Roberts nor the said Pauls had any right, title or interest in or to said trailer house or any right to sell or dispose of the same and that the plaintiff herein was not an innocent purchaser of said trailer house or a purchaser for value." For the reasons that the evidence does not support said findings and the evidence is uncontradicted that plaintiff was a purchaser without knowledge of any encumbrance or title defect paying \$2,000.00 consideration for the trailer house therefore being unequivocally an innocent purchaser for value under the law of the State of Idaho.

(b) In finding of fact X in holding and finding the defendant timely tendered back to the plaintiff the premium she had paid for the insurance policy as the evidence is to the contrary.

(c) In finding of fact IX in holding and finding "that at the time the plaintiff applied for and procured said policy of insurance, she had no insurable interest in said trailer house" as the evidence is to the contrary.

(d) In finding of fact XI in holding and finding that: "That the plaintiff had no insurable interest in said trailer house at the time of the oc-

currence of the fire and has no claim whatsoever upon or against the defendant by reason of said insurance policy'' as the evidence is to the contrary.

IV.

That the evidence discloses without contradiction the plaintiff entitled to recover \$4,627.50 under the terms of the contract of insurance, and reasonable attorney fees for prosecution of this action.

V.

That the evidence is wholly insufficient to support any affirmative defenses of defendant and thus to support the judgment entered.

VI.

The Court erred in not holding and finding the defendant waived or was estopped to assert any affirmative defense or defenses to payment of the risk insured against for the reasons no proper proof was adduced in support thereof and no timely tender back of premium was made to plaintiff.

VII.

That the Court erred in Conclusion of Law number I, for the reason that Joseph Roberts had apparent authority to pass title and in any event plaintiff by said purchase acquired an insurable interest in and to said trailer house.

VIII.

That the Court erred in Conclusions of Law number II and number III, for the reasons that plaintiff at the relevant dates having actual possession,

bill of sale and other incidents of ownership had therefore an insurable interest in such trailer house.

IX.

That the Court erred in finding of fact VIII to the effect that there was no disclosure to defendant by the plaintiff of the facts of the purchase of the trailer house for the reason that there is no evidence of any refusal by plaintiff to answer any inquiry of defendant concerning said facts of purchase or any other facts.

X.

That the cause having been determined and governed by the rules of law of the state of Idaho, it was the duty of the Court to follow such rules of law, and said rules of law of Idaho provide that a title certificate is not a condition necessary to acquiring title or actual ownership of a motor vehicle and an insurance policy is to be construed liberally in favor of the insured.

XI.

That the cause having been determined and governed by the rules of law of the State of Idaho, it was the duty of the Court to follow such rules of law, and said rules of law of Idaho provide by definition that an insurable interest is any interest in property or in relation thereto or liability in respect thereof and that the plaintiff insured need not prove existence of insurable interest and the burden to show lack of insurable interest, if any, is upon the defendant insurer, and in this cause

there is no evidence showing the plaintiff did not have an insurable interest.

XII.

That the Court further erred in conclusions of law I, II, III, IV, V, and VI, each and all of them for the reasons set forth above herein and that the same are against the law and evidence.

XIII.

That the judgment entered is against the law for the reasons set forth herein and is unconscionable and abridges the freedom and rights of the parties to contract.

Dated this twenty-fifth day of April, 1958.

GEORGE R. PHILLIPS,
JOHNSON AND OLSON,

By /s/ L. CHARLES JOHNSON,
Attorneys for Appellant.

[Endorsed]: Filed April 28, 1958.

[Title of Court of Appeals and Cause.]

MOTION

Comes now the appellant in the above-entitled cause and moves for an order permitting all exhibits in the above-entitled cause, being plaintiff's exhibits 1, 2, 3, 4, 5, 6 and 14 and defendant's exhibits 8, 9, 10, 11, 16 and 18, to be in their original form or typed copy thereof now in the record

to be considered by and before this Court on appeal and not be printed in the record.

GEORGE R. PHILLIPS,
JOHNSON AND OLSON,

By /s/ L. CHARLES JOHNSON,
Attorneys for Appellant.

[Title of Court of Appeals and Cause.]

STIPULATION

It is stipulated by and between the parties through their attorneys of record that Plaintiff's Exhibits 1, 2, 3, 4, 5, 6 and 14 and Defendant's Exhibits 8, 9, 10, 11, 16 and 18 may be considered by this court in their original form or typed copies thereof in the record to be considered by and before the court and need not be printed in the record.

Dated this twenty-fifth day of April, 1958.

JOHNSON AND OLSON,

By /s/ L. CHARLES JOHNSON,
Attorneys for Plaintiff-
Appellant

/s/ C. BEN MARTIN,
Attorneys for Defendant-
Appellee.

Service of copy acknowledged.

[Endorsed]: Filed May 5, 1958.

